2203

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. 856. 191.

JETTY SIMON, PLAINTIFF IN ERROR,

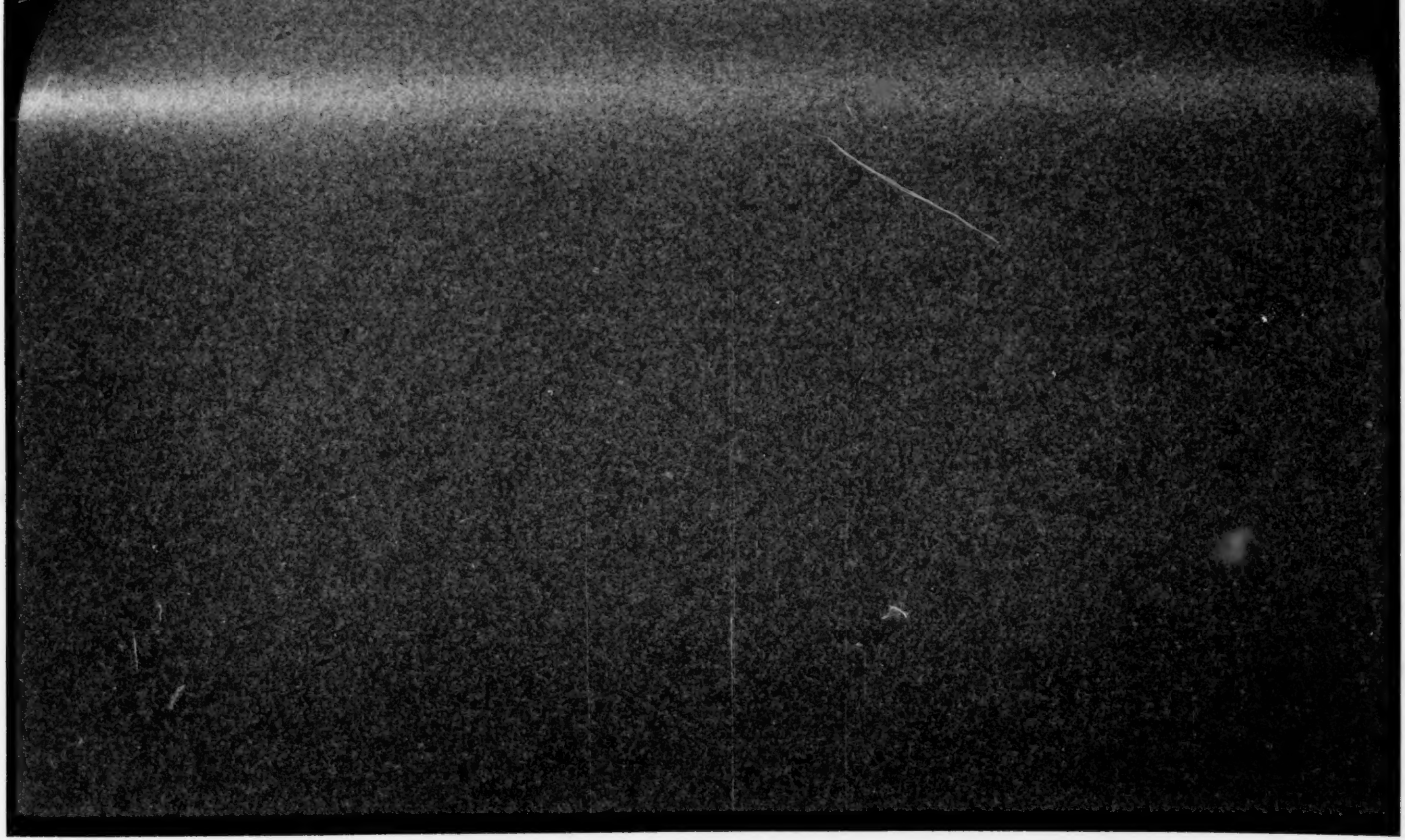
vs.

JOHN N. CRAFT.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ALABAMA.

FILED JANUARY 29, 1890.

(17,621.)



22035

(17,621.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 507.

JETTY SIMON, PLAINTIFF IN ERROR,

vs.

JOHN N. CRAFT.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ALABAMA.

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1 JETTY SIMON, Plaintiff in Error,
vs.
JOHN N. CRAFT, Defendant in Error.

I, Robert F. Ligon, Junior, clerk of the supreme court of Alabama, by virtue of the foregoing writ of error and in obedience thereto, do hereby transmit to the Supreme Court of the United States an authenticated copy of the record of the proceedings had in the supreme court of Alabama in the case of Jetty Simon, appellant, *vs.* John N. Craft, appellee, attaching thereto copies of the opinions filed by the supreme court of Alabama in said cause, and together with the assignments of errors and prayer for the reversal of the decision of the supreme court of Alabama, together with the citation to John N. Craft, defendant in error, with the return of the marshal thereon; also the original writ issued by the supreme court of Alabama, the prayer of Jetty Simon, plaintiff in error, therefor, the order of the chief justice of the supreme court of Alabama allowing the same, his certificate, and the bond filed by the plaintiff in error, approved by the chief justice of the supreme court of Alabama.

In testimony whereof I have caused the seal of this the supreme court of Alabama to be hereunto affixed, in the city of Montgomery, State of Alabama, on the 15 day of January, in the year of our Lord nineteen hundred.

[Seal of the Supreme Court of Alabama.]

ROBERT F. LIGON, JR.,
Clerk of the Supreme Court of Alabama.

2 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of the State of Alabama, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in said supreme court of the said State of Alabama, before you or some of you, being the highest court of law or equity of the said State in which a decision can be had in the said suit between Jetty Simon, plaintiff in error, and John N. Craft, defendant in error, wherein was drawn in question the construction of a clause of the Constitution of the United States and the decision was against the right, title, privilege, or exemption specially set up or claimed under such clause of the said Constitution, a manifest error hath happened, to the great damage of the said Jetty Simon, plaintiff in error, as by her complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that

you will have the same at Washington on the 14th day of February, 1900, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Seal United States Circuit Court, Southern Dist. of Ala.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, and the seal of the circuit court of the United States for the southern district of Alabama, at the city of Mobile, Alabama, this the 2nd day of January, A. D. 1900.

RICH'D JONES,
Clerk U. S. Circuit Court for the Southern District of Alabama.

Allowed by—
THOS. N. McCLELLAN,
Chief Justice of the Supreme Court of Alabama.

3 UNITED STATES OF AMERICA, *ss:*

The President of the United States to John N. Craft and Messrs. Pillans, Torrey and Hanaw, and Bastor and Gray, his attorneys, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be held at the city of Washington, within thirty (30) days from the date of this writ, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Alabama, at Montgomery, wherein Jetty Simon is plaintiff and you are defendant in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness my hand, at the city of Montgomery, in the State of Alabama, this the 15th day of January, in the year of our Lord one thousand and nine hundred.

THOS. N. McCLELLAN,
Chief Justice.

4 [Endorsed:] 216. Original. 56. Received in office January 18th, 1900. Frank Simmons, U. S. marshal. Executed by serving copies of this writ on Jno. N. Craft, Bestor & Gray, and Pillans, Torrey & Hannaw. Frank Simmons, U. S. marshal, so. dis. Ala. Marshal's fee, $6.00.

5 1 Div., 19.

Filed Mar. 31, 1899. Robert F. Ligon, Jr., Clerk.

Supreme Court of Alabama.

JETTY SIMON, Appellant (Plaintiff),
vs.
JOHN N. CRAFT, Appellee (Defendant).

From Mobile circuit court.

Apr. 5, 1899.—Submitted on briefs.
Nov. 23, 1899.—Affirmed on the authority of Craft *vs.* Simon, 118 Ala., page 625.

DOWDELL, *J.*

6 A transcript of the record and proceedings had in a certain cause pending in the circuit court of Mobile county, Alabama, therein lately pending, wherein Jetty Simon was plaintiff and John N. Craft, substituted defendant in place of Charles H. Brown, original defendant, was defendant.

Summons and Complaint.

THE STATE OF ALABAMA,
Mobile County.

Circuit Court of Mobile.

To any sheriff of the State of Alabama, Greeting:

You are hereby commanded to summon Chas. H. Brown to appear before the circuit court of Mobile county, Ala., at the place of holding the same, at the next term thereof, then and there to answer the complaint of Jetty Simon.

Witness B. F. Jackson, clerk of the said court, at office, this 6th day of September, in the year of our Lord one thousand eight hundred and ninety-five.

Attest: B. F. JACKSON, *Clerk.*

I acknowledge myself security for the costs in this suit — 2nd day of Dec., 1895.

W. MITCHELL. [SEAL.]

JETTY SIMON, Plaintiff,
vs.
CHAS. H. BROWN, Defendant.

The plaintiff sues to recover possession of the following tract of land: Beginning at a point on the north line of Church street and west from the northwest intersection of Church and Joachim streets and distant therefrom fifty-six feet and nine inches ($56\frac{9}{12}$ feet) or thereabouts, running thence westerly along the northern line of

Church street fifty-six feet and nine inches (56 9/12 feet) or thereabouts; thence northerly and parallel with Joachim street eighty feet and six inches or thereabouts; thence easterly and parallel with Church street fifty-six feet and nine inches (56 9/12 feet) or thereabouts; thence to the point of beginning, bounded south by Church street, west by property of Mrs. Fitzsimmons, north by property of John Parham, and east by property late of Mrs. L. Jones, of which he was in possession, and upon which, pending such possession and before the commencement of this suit, the defendant entered and unlawfully withholds, together with ($5,000.00) five thousand dollars for the detention thereof.

7

GREGORY L. & H. T. SMITH,
Attorneys for Plaintiff.

Sheriff's Return.

Rec'd September 6th, 1895, and on the same day I served a copy of the within complaint and summons on Chas. H. Brown.

P. B. DORLAN, *Sh'ff*,
By ED. HARRIS, *D. S.*

Order Allowing John Craft to Defend in Place of Chas. H. Brown.

At a regular term of the circuit court of Mobile county, State of Alabama, begun and held in the city of Mobile on the 25th day of November, 1895, the same being the fourth Monday after the fourth Monday in October, 1895, the Honorable William S. Anderson, judge of the thirteenth judicial circuit of Alabama, present and presiding, and on the 6th day of December, A. D. 1895, the same being another regular day of said term, it was ordered as follows in this cause, to wit:

JETTY SIMON *vs.* CHARLES H. BROWN.	Jno. N. Craft, the Landlord, Comes into Court and is Allowed to Defend in Place of Charles H. Brown.

This day came the parties, by their attorneys, and also came John Craft, by his attorney, and shows to the court that he is the landlord of the premises sued on in this cause, and, upon his motion, it is ordered and considered by the court that the said Jno. Craft be, and he is hereby, allowed to defend this suit in the place and stead of Charles H. Brown.

Judgment.

And on the 15th day of January, A. D. 1896, the same being another regular day of said term, it was ordered as follows in this cause, to wit:

JETTY SIMON *vs.* JOHN N. CRAFT, Intervening as Landlord and Substituted for Chas. H. Brown, Sued as Tenant, said Craft Being the Sole Defendant as Landlord on His Own Motion.	Jury and Verdict for Plaintiff. Damages Assessed at $412.00, and for Land Described in Complaint.

This cause being called for trial, came the parties, by their attorneys; and a jury being selected, empannelled, and sworn, and having heard the evidence and argument of counsel, together with
8 the instructions of the court, and having retired and considered of their verdict, returned, and by their verdict said, "We, the jury, find for the plaintiff for the lands described in the complaint and assess her damages at four hundred and twelve dollars," it is therefore ordered, considered, and adjudged by the court that the plaintiff have and recover of the defendant, John N. Craft, the following-described real estate, viz: Beginning at a point on the north side of Church street and west from the northwest intersection of Church and Joachim streets and distant therefrom fifty-six feet and nine inches ($56\frac{9}{12}$ feet) or thereabouts, running thence westerly along the northern line of Church street fifty-six feet and nine inches ($56\frac{9}{12}$ feet) or thereabouts; thence northerly and parallel with Joachim street eighty feet and six inches — thereabouts; thence easterly and parallel with Church street fifty-six feet and nine inches ($56\frac{9}{12}$ feet) or thereabouts; thence to the point of beginning, bounded south by Church street, west by property of Mrs. Fitzsimmons, north by property of John Parham, and east by property late of Mrs. L. Jones, together with four hundred and twelve dollars ($412.00) damages for the detention thereof, and that a writ of possession of said real estate issue on behalf of the plaintiff against the defendant in said cause, together with an execution for the sum of four hundred and twelve dollars and the costs of said cause.

The defendant thereupon prayed an appeal to the supreme court of the State of Alabama, and he having prayed the court to fix the amount of the supersedeas bond to be given upon said appeal—

It is further considered, ordered, and adjudged that a supersedeas bond in addition to the bond prescribed by the statute, in order to supersede the monetary portion of the judgment, be given, in the form prescribed by law, in the sum of five hundred dollars.

Bond.

STATE OF ALABAMA, }
County of Mobile. }

Know all men by these presents that we, John N. Craft, H. L. Griffin and Wm. H. Sullivan, G. B. Shawhan and Jas. K. Glennon, of said State and county, are held and firmly bound unto Benjamin F. Jackson, as clerk of the circuit court of Mobile county, in the sum of five hundred dollars, being the amount fixed by the judge of said court to supersede the judgment in the cause of Jetta
9 Simon against the said John N. Craft to be paid to the said B. F. Jackson, as clerk as aforesaid, or his successor in office; for which payment, well and truly to be made, we bind ourselves and our heirs, executors, or administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 1st day of February, A. D. 1896.

The condition of the above obligation is such that whereas Jetta Simon recovered of the said John N. Craft, at the fall term, 1895, of the circuit court of Mobile county, in an action of ejectment therein pending in her favor and against said Craft for the real property described in the complaint in said case, for the recovery and possession of which judgment was rendered by said court on the 15th of January, 1896, and from which judgment the said John N. Craft has taken an appeal to the supreme court of Alabama, returnable to the first Monday of March, 1896:

Now, if the said John N. Craft will prosecute to effect the said appeal and pay all such costs and damages as any party aggrieved may sustain by reason of the wrongful appeal and suspension of the said judgment, then this obligation to be void; else to be and remain in full force and effect.

JOHN N. CRAFT. [SEAL.]
H. L. GRIFFING. [SEAL.]
WM. H. SULLIVAN. [SEAL.]
G. B. SHAWHAN. [SEAL.]
JAS. K. GLENNON. [SEAL.]

Filed in office February 4th, 1896.

B. F. JACKSON, *Clerk.*

Bond.

STATE OF ALABAMA, }
County of Mobile. }

Know all men by these presents that we, John N. Craft, H. L. Griffin and Wm. H. Sullivan, G. B. Shawhan and Jas. K. Glennon, of said State and county, are held and firmly bound unto Jetta Simon in the sum of eight hundred and twenty-four dollars, to be paid to the said Jetta Simon, her certain attorneys, executors, administrators, or assigns; for which payment, well and truly to be made, we bind ourselves, and our heirs, executors, or administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 1st day of February, A. D. 1896.

10 The condition of the above obligation is such that whereas the said Jetta Simon recovered of the said John N. Craft, at the fall term, 1895, of the circuit court of Mobile county, in an action of ejectment therein pending in her favor and against said Craft, the sum of four hundred and twelve dollars for the rent of the premises therein sued for and described, for which judgment was rendered by said court on the 15th day of January, 1896, and from which judgment the said John N. Craft has taken an appeal to the supreme court of Alabama, returnable to the first Monday of March, 1896:

Now, if the said John N. Craft will prosecute to effect the said appeal or if he fail therein to pay such judgment as the supreme court may render in the premises, then this obligation to be void; else to be and remain in full force and effect.

JOHN N. CRAFT. [SEAL.]
H. L. GRIFFING. [SEAL.]
WM. H. SULLIVAN. [SEAL.]
G. B. SHAWHAN. [SEAL.]
JAS. K. GLENNON. [SEAL.]

Filed in office February 4th, 1896.

B. F. JACKSON, *Clerk.*

Citation in Appeal.

THE STATE OF ALABAMA, }
Mobile County. }

Circuit Court.

To the sheriff of Mobile county, Greeting:

Whereas at a term of the circuit court of Mobile for Mobile county, held on the fourth Monday after the fourth Monday in October, 1895, in a certain cause in said court wherein Jetty Simon was plaintiff and John N. Craft was defendant, a judgment was rendered against said John N. Craft, to reverse which judgment the said John N. Craft on the 1st day of February, 1896, applied for and obtained from this office an appeal, returnable to the next term of our supreme court of the State of Alabama, to be held at Montgomery on the first Monday of March next, and the necessary bond having been given by the said John N. Craft, as principal, with H. L. Griffing, Wm. H. Sullivan, G. B. Shawhan, & Jas. K. Glennon, as sureties:

Now, you are hereby commanded, without delay, to cite the said Jetty Simon or G. L. & H. T. Smith, her attorneys, to appear
11 at the next term of our said supreme court to defend against the said appeal, if she or they think proper.

Witness B. F. Jackson, clerk of the circuit court of said county, this 17th day of February, A. D. 1896.

Attest:

B. F. JACKSON, *Clerk.*

Sheriff's Return.

Received February 17, 1896, and on the same day I served a copy of the within citation in appeal on G. L. and H. T. Smith by serving on G. L. Smith, Esq.

P. B. DORLAN, *Sheriff.*
ED. HARRIS, *D. S.*

Certificate of Appeal.

JETTY SIMON
vs.
JOHN N. CRAFT.

I, B. F. Jackson, clerk of the circuit court of Mobile county, State of Alabama, do hereby certify that in the above-entitled cause a judgment was rendered by the circuit court of Mobile county, Alabama, in favor of Jetty Simon and against John N. Craft, on the 15th day of January, A. D. 1896, for the land sued for in this cause and for the sum of four hundred and twelve $\frac{0}{100}$ dollars, besides costs of court, and that on the 1st day of February, 1896, John N. Craft applied for and took an appeal from said judgment and entered into bond with H. L. Griffing, W. H. Sullivan, G. B. Shawhan, and James K. Glennon, as sureties, in the sum of eight hundred and twenty-four dollars, which appeal was made returnable to the first Monday in March, 1896, as of the fall or November term, 1895, of the supreme court of Alabama, and that all further proceedings in said cause were suspended.

Witness my hand this the 20th day of February, A. D. 1896.

B. F. JACKSON, *Clerk.*

Filed in office Febr'y 20, 1896.

B. F. JACKSON, *Clerk.*

12 *Certificate of Reversal.*

THE STATE OF ALABAMA,
Judicial Department.

The Supreme Court of Alabama, November Term, A. D. 1898.

To the clerk of the circuit court of Mobile county, Greeting:

Whereas the record and proceedings of the circuit court of said county in a certain cause lately pending in said court between John N. Craft, appellant, and Jetta Simon, appellee, wherein, by said court, at the —— term, 189–, it was considered adversely to said appellant, were brought before our supreme court, by appeal taken, pursuant to law, on behalf of said appellant:

Now, it is hereby certified that it was thereupon considered by our supreme court on the 28th day of June, 1897, that said judgment of said circuit court be reversed and annulled and the cause

remanded to said court for further proceedings therein. It is also considered that the appellee pay the costs accruing on said appeal in this court and in the court below.

Witness R. F. Ligon, Jr., clerk of the supreme court of Alabama, at the capital, this the 14 day of November, 1898.

ROBERT F. LIGON, JR.,
Clerk of the Supreme Court of Alabama.

THE STATE OF ALABAMA, }
Mobile County. }

Filed this 17th day of Nov., 1898.

B. F. JACKSON, *Clerk.*

Judgment.

At a regular term of the circuit court of Mobile county, State of Alabama, begun and held in the city of Mobile on the 21st day of November, A. D. 1898, the same being the 4th Monday after the 4th Monday in October, A. D. 1898, the Honorable William S. Anderson, judge of the thirteenth judicial circuit of the State of Alabama, present and presiding, and on the 13th day of December, A. D. 1898, the same being another regular day of said term, it was ordered as follows in this cause, to wit:

JETTY SIMON *vs.* JOHN N. CRAFT, Substituted Defendant in Place of Charles H. Brown, Original Defendant.	Jury Find the Defendant Not Guilty.

13 This day came the parties, by their attorneys, and issue having been joined between the plaintiff and defendant, thereupon came a jury of good and lawful men, to wit, Thos. Young and eleven others, who, having been duly empanneled and sworn according to law *who* having heard the evidence and the charge of the court, upon their oaths do say, "We, the jury, find the defendant not guilty."

It is therefore ordered and adjudged by the court that the defendant go hence without day and have and recover of the plaintiff all costs in and about this behalf expended, for the recovery of which let execution issue.

Bill of Exceptions.

JETTY SIMON }
vs. }
JOHN CRAFT. }

Be it remembered that this cause coming on to be heard on this the thirteenth day of December, 1898, it being a day of the regular term of the circuit court of Mobile county, came the parties, by

their attorneys, and a jury having been duly selected, empanneled, and sworn, the plaintiff offered and read in evidence the following portion of an agreement entered into by and between the attorneys of record in said cause:

"This instrument witnesseth the following agreement of facts made and entered into by and between the plaintiff, Jetty Simon, and John N. Craft, substituted for Charles H. Brown, tenant as the intervening landlord in the above-entitled cause, viz., that is to say: It is admitted by all parties to this agreement, 1st, that the plaintiff, Jetty Simon, entered into the possession of the real estate which is the subject of this litigation, on the twenty-third day of May, 1872, under a deed, a copy of which is hereto attached, marked Exhibit 'A,' and made a part hereof and now referred to; and that said Jetty Simon continued in the actual and exclusive and adverse possession of said property, claiming the same under said deed until the sixth day of May, 1889. 2nd. It is further agreed between the said parties, that the said Charles H. Brown held the possession of said property at the time of the commencement of this suit as the tenant of the said John Craft, claiming the same
14 by no other title except as such tenant. 3rd. It is further agreed between said parties that said John Craft entered into the possession of said property under a deed executed to him May 17th, 1889, by Henry Simon and wife, a copy of which is hereto attached, marked Exhibit 'A 1' and made a part hereof and now referred to.

* * * * * * *

It is further agreed between said parties that all of the exhibits hereto attached are true and exact copies of the papers from which they purport to be copied, and shall be taken and treated in all respects upon the trial of this cause as if they were the original papers of which they purport to be copies, and as if their execution and identity had been proved on said trial by evidence in all respects as if they were the said originals themselves, and subject only to such objections as might be valid objections to the introduction of such originals properly authenticated or to the introduction of properly authenticated copies of such record or proceedings.

* * * * * * *

It is not agreed, however, that the facts stated in this agreement are either relevant or material as evidence in said cause, but this question must be settled by the court when said facts are offered in evidence by either party, should either party offer the same in evidence during the trial.

It is further agreed that said defendant, John N. Craft, has held possession of said premises under claim as owner thereof, under the conveyance of Henry J. Simon to him, claiming under said conveyance in good faith, and rented the same out for the years ending November 1st, 1894, 1895, 1896, at four hundred and twelve dollars (412.00) per year, and for the previous time since receiving said conveyance at four hundred and twenty-five dollars ($425.00)

per year; that said rent was the true rental value of said property for the time covered thereby, and that the rental value of said property has been four hundred dollars ($400.00) per annum from that date."

Made this the twelfth day of December, 1898.

(Signed) GREGORY L. & H. T. SMITH,
Attorneys for Plaintiff.
BESTOR & GRAY,
PILLANS, TORREY & HANAW,
Attorneys for the Defendant.

15 Said agreement so offered in evidence was a portion of an entire agreement subsequently offered in evidence and made a part of this bill of exceptions.

The plaintiff then offered & read in evidence a conveyance dated the twenty-third day of May, 1872, and attached to said agreement and marked Exhibit "A," a copy of which said conveyance is part of the exhibits to the agreement subsequently offered in evidence by the defendant.

Plaintiff also offered and read in evidence a conveyance executed May 17th, 1889, marked Exhibit "A 1," a copy of which is an exhibit to an agreement subsequently offered in evidence by the defendant.

The plaintiff here rested her case.

Thereupon the defendant, John Craft, through his attorneys, offered and read in evidence an agreement between the attorneys of record dated December 12th, 1898, together with several exhibits thereto; which said agreement and exhibits are as follows, viz:

Circuit Court of Mobile County.

JETTA SIMON *vs.* JOHN CRAFT, Intervening as the Landlord, Substituted for Charles H. Brown, Sued as Tenant, said Craft Being Now Sole Defendant as Landlord on His Own Motion.	No. 8330.

This instrument witnesseth the following agreement of facts made and entered into by and between the plaintiff, Jetta Simon, and John N. Craft, substituted for Charles H. Brown, tenant, as the intervening landlord in the above-entitled cause, viz., that is to say:

It is admitted by all parties to this agreement—

First.

That the plaintiff Jetta Simon entered *entered* into the possession of the real estate which is the subject of this litigation on the 23rd day of May 1872 under a deed, a copy of which is hereto attached marked Exhibit "A" and made a part hereof and now referred to,

and that said Jetta Simon continued in the actual and exclusive and adverse possession of said property claiming the same under said deed until the 6th day of May 1889.

16 Second.

It is further agreed between the said parties that the said Charles H. Brown held the possession of said property at the time of the commencement of this suit as the tenant of the said John Craft claiming the same by no other title except as such tenant.

Third.

It is further agreed between said parties that said John Craft entered into the possession of said property under a deed executed to him May 17th 1889 by Henry Simon and wife, a copy of which is hereto attached marked Exhibit "A" and made a part hereof and now referred to, and that the title thus obtained was acquired by said Henry Simon under a deed executed to him by Ralph G. Richards, purporting to act as the guardian of the said Jetta Simon, a copy of which is hereto attached marked Exhibit "B" and made a part hereof and now referred to, and under the proceedings referred to in said deed and which are hereinafter referred to, and that the said John Craft has held the possession of said property from the time of his said entrance thereupon until the present time under the claim that by virture of said deed and the proceedings referred to in said deed from Richards to Henry Simon he acquired the title of the said Jetta Simon to said property.

Fourth.

It is further agreed by and between said parties that Exhibit "C" hereto attached is a full, true and exact copy of all the proceedings in the probate court of Mobile county under which it is claimed by the said John Craft that the said Ralph G. Richards was the guardian of Jetta Simon and as such authorized to make said conveyance to Henry Simon.

Fifth.

It is further agreed between said parties that all of the exhibits hereto attached are true and exact copies of the papers from which they purport to be copied, and shall be taken and treated in all respects upon the trial of this cause as if they were the original papers of which they purport to be copies, and as if their execution and identity had been proved on said trial, in evidence, in all respects as if they were the said originals themselves and subject only to such objections as might be valid objections to the introduction of such originals properly authenticated, or to the introduction of
17 properly authenticated copies of such record or proceedings.

Pasted to the writ of arrest in the proceedings upon the inquisition of lunacy and upon the back of which writ of arrest is endorsed the sheriff's return hereinafter copied, is a letter, copy of which appears in Exhibit "E."

This copy is to be treated as the original paper from which it is copied and is to be subject only to such objections as it might be subject to had the original *had it* been offered in evidence.

Sixth.

That as matter of fact the jury which was empaneled and sworn in the inquisition proceedings instituted by Ralph G. Richards against Jetta Simon in the probate court of Mobile county, and which rendered the verdict which is relied upon by the defendant as conferring jurisdiction upon the probate court to appoint a guardian of Jetta Simon, consisted of the following persons, who then resided as hereinafter set forth, viz:—George Threefoot south side of Dauphin street three west of Broad street in the city of Mobile, Charles Stuart north side of Dauphin street two east of Bayou street in the city of Mobile, W. J. Jolly who resided in the county of Mobile but outside of the city limits, John F. McGovern south side of Dauphin street two west of Jackson street in the city of Mobile, E. Harney colored, west side of Broad street four south of Charleston street in the city of Mobile, John Pollard Junior, south side of Spring Hill avenue eleven east of Ann street in the city of Mobile, Charles Babbitt northeast corner of Hamilton and Canal streets in the city of Mobile, Henry Ortmann two hundred and six Dauphin street in the city of Mobile, William Fincher county of Mobile but who resided outside of the city limits, William Cox, northeast corner of Government and Broad streets in the city of Mobile, Fred W. Sheppard twelve St. Michael street in the city of Mobile, and W. R. Gerow number five North Jackson street in the city of Mobile.

It is further agreed that the said Jetta Simon resided, at the time of said proceedings for inquisition and at the institution thereof, upon the property which is now in controversy.

It is not agreed, however, that the facts stated in this agreement are either relevant or material as evidence in said cause but this question must be settled by the court when said facts are
18 offered in evidence by either party should either party offer the same in evidence during the trial.

It is further agreed that said defendant John N. Craft has held possession of said premises under claim as owner thereof under the conveyance of Henry J. Simon to him claiming under said conveyance in good faith and rented the same out for the years ending November 1st, 1894, 1895, and 1896 at $412.00 per year, and for the previous time since receiving said conveyance at $425.00 per year, that said rent was the true rental value of said property, for the time covered thereby, and that the rental value of said property has $400.00 per annum since that date.

Made this the 12th day of December, 1898.

GREGORY L. & H. T. SMITH,
Attorneys for Plaintiff.
PILLANS, TORREY & HANAW,
BESTOR & GRAY, *Att'ys for Def't.*

Ex. "A."

Culver to Simon. } Deed Book No. 40, N. S., pages 415 & 416.

This indenture made the 23rd day of May in the year of our Lord one thousand eight hundred and seventy-two between Eliza A. Culver & Warren F. Culver her husband of the county of Mobile & State of Alabama of the first part and Jetty Simon wife of S. Simon, of said county and State of the second part. Witnesseth that the said parties of the first part for and in consideration of the sum of five thousand dollars lawful money of the United States of America, to them in hand paid by the said party of the second part at or before the ensealing and delivery of these presents the receipt whereof is hereby acknowledged and the said party of the second part, her heirs, executors, and administrators, forever released and discharged from the same by these presents, have granted bargained sold, aliened, remised released, enfeoffed conveyed and confirmed and by these presents do grant bargain sell, alien remise, release, enfeoff, convey and confirm to the said party of the second part, her heirs, and assigns, forever.

All and singular that certain piece, parcel, or lot of land situated in the city of Mobile & county aforesaid, bounded and described as follows, to wit: Beginning at a point on the north line of Church street & west from the northwest intersection of Church &
19 Joachim streets & distant therefrom fifty-six feet and nine inches ($56\frac{9}{12}$ feet) or thereabouts running thence westerly along the northern line of Church street fifty-six feet and nine inches ($56\frac{9}{12}$ feet) or thereabouts, thence northerly and parallel with Joachim street eighty feet and six inches or thereabouts thence easterly and parallel with Church street fifty-six feet and nine inches ($56\frac{9}{12}$ feet) or thereabouts thence to the point of beginning. Bounded south by Church street west by property of Mrs. Fitzsimmons, north by property of John Parham & east by property late of Mrs. L. Jones. It being the same premises conveyed to Mrs. Elizabeth B. Colomb by W. Jones & Mary L. Jones, his wife by deed dated 13th April 1869 & recorded in the probate office of the said county in Book 25 N. S. pp. 423, 424, & 425, & by Wm. J. Brooks & Guy Brooks his wife by deed dated 5th, April 1869 & recorded in said Book 25 N. S. page- 421, 422, & 423 & the same that were afterwards conveyed by said Mrs. Elizabeth B. Colomb & H. O. Colomb her husband to the said Mrs. Eliza A. Culver by deed dated the 9th, Aug. 1870 & recorded in said probate office in Book 28 N. S. pp. 65 & 66, together with the tenaments, hereditaments, rights, members, privileges, and appurtances unto the above mentioned and described premises, belonging or in anywise appertaining. To have and to hold the above granted and described premises with the appurtenances, unto the said party of the second part her heirs and assigns to the sole and proper use benefit and behoof of the said party of the second part, her heirs and assigns forever. And the said Eliza A. Culver

& Warren F. Culver her husband for themselves and their heirs the above-described and hereby granted and released premises and every part and parcel thereof, with the hereditaments and appurtenances, unto the said party of the second part her heirs and assigns against the said parties of the first part and their heirs and against all and every person and persons whomsoever lawfully claiming or to claim the same shall and will warrant and by these presents forever defend.

In witness whereof the parties of the first part have hereunto set their hands and seals the day and year first above written.

ELIZA A. CULVER. [L. S.]
W. A. CULVER. [L. S.]

Sealed and delivered in presence of—
WM. M. LOOMIS.

20 THE STATE OF ALABAMA, }
Mobile County. }

I, Wm. M. Loomis, a justice of the peace for said county and State, hereby certify that Eliza A. Culver and Warren F. Culver, whose names are signed to the foregoing conveyance and who are known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, they executed the same voluntarily of the day the same bears date.

Given under my hand this twenty-second day of May, A. D. 1872.

WM. M. LOOMIS,
Justice of the Peace, Mobile County.

Stamps, $5.00.

Ex. A 1.

H. J. Simon & wife }
to
John N. Craft. }

This indenture made the seventeenth day of May in the year of our Lord one thousand eight hundred and eighty-nine between Henry J. Simon and Ida Simon his wife of Mobile, Alabama of the first part and John N. Craft of Mobile, Alabama of the second part witnesseth. That the said parties of the first part for and in consideration of the sum of four thousand dollars lawful money of the United States of America to them in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, an- the said party of the second part, his heirs executors and administrators, forever released and discharged from the same by these presents have granted, bargained sold, aliened remised, released enfeoffed, conveyed, and confirmed, and by these presents do grant bargain sell, alien, remise release, enfeoff convey and confirm, to the said party of the second part, his heirs and assigns forever, all, and singular, that certain piece or parcel or lot of land situated in the

city and county of Mobile Alabama, bounded and described as follows, to wit: Beginning at a point on the north line of Church street and west from the northwest intersection of Church and Joachim streets and distant therefrom fifty-six feet and nine inches or thereabouts, running thence westerly along the northern line of Church street fifty-six feet nine inches or thereabouts, thence
21 northerly and parallel with Joachim street eighty feet six inches or thereabouts thence easterly and parallel with Church street fifty-six feet and nine inches or thereabouts thence to the point of beginning; bounded south by Church street west by property of Mrs. Fitzsimmons, north by property of John Parham, and east by property late of Mrs. Mary L. Jones, being the same premises conveyed to Elizabeth B. Colomb by W. Jones and Mary L. Jones his wife by deed dated 13th April, 1869, and recorded in the probate office of said county in Book N. S. pp. 423, 424 & 425, and by William J. Brooks and Guy Brooks his wife by deed dated 5th April, 1869, and recorded in said Book 25 N. S. pp. 421, 422, 423, and the same that were afterwards conveyed by said Mrs. Elizabeth B. Colomb and H. O. Colomb her husband to the said Mrs. Eliza A. Culver by deed dated the ninth August, 1870, and recorded in said probate office in Book 28 N. S. pp. 65 & 66 and being same property deeded to said H. J. Simon by Ralph G. Richards g'd'n of Jetta Simon a *non compos mentis* on May 11th, 1889. Together with all and singular the tenements, hereditaments, rights, members, privileges and appurtenances, unto the above mentioned and described premises belonging, or in anywise appertaining. To have and to hold the above granted and described premises, with the appurtenances unto the said party of the second part his heirs and assigns, to the sole and proper use, benefit, and behoof of the said party of the second part, his heirs and assigns forever. And the said Henry J. Simon for himself and his heirs, the above described and hereby granted and released premises and every part and parcel thereof, with the hereditaments and appurtenances unto the said party of the second part his heirs and assigns, against the said parties of the first part, and their heirs, and against all and every person and persons, whomsoever, lawfully claiming or to claim the same, shall and will warrant and by these presents forever defend.

In witness whereof, the parties to these presents have hereunto set their hands and seals the day and year first above written.

HENRY J. SIMON. [SEAL.]
IDA SIMON. [SEAL.]

Sealed and delivered in presence of—

HENRY HANAW,
E. S. BARNES,
As to H. J. S.

THE STATE OF ALABAMA, }
Mobile. }

I, Henry Hanaw, a notary public in and for Mobile
22 county, Alabama, hereby certify that Henry J. Simon and Ida Simon, his wife, whose names are signed to the foregoing conveyance, and who are known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, they executed the same voluntarily on the day the same bears date.

Given under my hand this seventeenth day of May, A. D. 1889.

HENRY HANAW,
[SEAL.] *Notary Public, Mobile Co., Ala.*

STATE OF ALABAMA, }
Mobile County. }

I, Henry Hanaw, a notary public in and for said State and county, do hereby certify that on the 17th day of May, 1889, came before me the within-named Ida Simon, known to me to be the wife of Henry J. Simon, the within named, who, being examined separate and apart from the husband touching her signature to the within conveyance, acknowledged that she signed the same of her own free will and accord and without fear, constraints, or threats on the part of her husband.

In witness whereof I hereto set my hand this 17th day of May, 1889.

[SEAL.] HENRY HANAW,
Notary Public, Mobile County, Alabama.

Received in office for record May 18th, 1891.

Ex. B.

Richard, grd., }
to
Simon. }

STATE OF ALABAMA, }
Mobile County. }

Know all men by these presents that whereas I Ralph Richard, guardian of Jetta Simon a *non compos mentis* legally appointed by an order of the honorable probate court of said county, made and entered on the 11th day of February 1889 was by a subsequent order and decree of said court, made and entered on the seventh day of March 1889, empowered to sell and convey certain real estate the property of his said ward; and whereas having given due notice of the intended sale, by publication previous to the sale for thirty days for four consecutive weeks in the Mobile Item, a newspaper published in Mobile county of the time, place and terms of sale;
23 I did as such guardian sell at public outcry in front of the court-house, of said county at 12 o'clock noon on the 15th day of April 1889 to Henry Simon for the sum of five thousand

one hundred dollars, that being that highest and best bid for the same, the real estate of said Jetty Simon *non compos mentis*, described as follows: All and singular that certain piece or parcel or lot of land situated in the city and county of Mobile Alabama bounded and described as follows to wit: Beginning at a point on the north line of Church street and west from the northwest intersection of Church and Joachim streets and distant therefrom fifty-six feet and nine inches or thereabouts, running thence westerly along the northern line of Church street fifty-six feet nine inches or thereabouts thence northerly and parallel with Joachim street eighty feet six inches or thereabouts, thence easterly and parallel with Church street fifty-six feet and nine inches or thereabouts, thence to the point of beginning; bounded south by Church St. west by property of Mrs. Fitzsimmons, north by property of John Parham and east by property late of Mrs. Mary L. Jones.

Being the same premises conveyed to Elizabeth B. Colomb by W. Jones and Mary L. Jones his wife by deed dated 13th, April 1869 and recorded in the probate office of said county in Book N. S. pp. 423, 424 & 425 and by William J. Brooks and Guy Brooks his wife by deed dated 5th, April 1889 and recorded in said Book 25 N. S. at page- 421, 422 & 423 and the same that were afterwards conveyed by said Mrs. Elizabeth B. Colomb and H. O. Colomb her husband to the said Mrs. Eliza A. Culver by deed dated the ninth August, 1870, and recorded in said probate office in Book 28 N. S., pp. 65 & 66.

And whereas the said probate court by its decree rendered on the 11th day of May, 1889, confirmed the said sale and directed me the said Ralph G. Richards as guardian as aforesaid to convey by proper deed to said Henry J. Simon the purchaser all the right, title and interest which said Jetta Simon had and has in said lands at the time of said sale.

Now therefore in consideration of the payment of the said purchase price of said lands by said Henry J. Simon, the receipt whereof is hereby acknowledged, and by virtue of the power and authority vested in me by the said decree of the probate court made on the eleventh day of May 1889 and in obedience thereto, I do
24 hereby grant, bargain, sell and convey unto the said Henry J. Simon his heirs and assigns forever, all claims, right, title and interest which the said Jetta Simon had at the date of said sale and now has in and to the property aforesaid.

To have and to hold unto the said Henry J. Simon his heirs and assigns forever.

In witness whereof I as guardian aforesaid do hereunto set my hand and seal this 11th day of May, 1889.

RALPH G. RICHARD, [SEAL.]
Guardian of Jetta Simon.

STATE OF ALABAMA, }
Mobile County. }

I, Henry Hanaw, a notary public in and for said State and county, hereby certify that Ralph G. Richard, whose name is signed to the

foregoing conveyance as guardian of Jetta Simon, a *non compos mentis*, and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he executed the same voluntarily on the day the same bears date.

Given under my hand this 11 day of May, 1889.

HENRY HANAW,
Notary Public, Mobile County, Alabama.

Received in office for record May 14th, 1889.

EXHIBIT C.

In re JETTA SIMON, a Person of Unsound Mind.

Petition for Inquisition of Lunacy.

THE STATE OF ALABAMA, }
Mobile County. }

In Probate Court, Mobile County.

To the Honorable Price Williams, judge of said court:

Your petitioner, Ralph G. Richard, respectfully represents unto your honor that he is a friend to one Jetta Simon and of her family; that said Jetta Simon is a female of the age of forty-nine years, and resides at Mobile, and is of unsound mind and incapable of governing herself or of conducting and managing her affairs.

Wherefore your petitioner prays your honor to take cognizance of the matter of this his petition and appoint a day for hearing the same, and that such proceedings may be had as shall be necessary and proper to determine according to law in such case made whether or not the said Jetta Simon is a person of unsound mind.

RALPH G. RICHARD.

STATE OF ALABAMA, }
Mobile County. }

Before me personally appeared Ralph G. Richard, who, being duly sworn, deposes and says that he is fully informed of the allegations contained in the foregoing petition, and that he believes the same to be true, as therein stated.

RALPH G. RICHARD.

Sworn to and subscribed before me this 29th day of January, 1889.

HENRY HANAW,
Notary Public, Mobile Co., Ala.

Filed January 31st, 1889.

THOMAS KIERNAN, *Clerk.*

The verdict of the jury, endorsed upon the back of said petition, is as follows, viz:

"We, the jury, find Mrs. Jetta Simon to be of unsound mind.

"JOHN POLLARD, JR., *Foreman.*"

JETTA SIMON, an Alleged Lunatic.

JANUARY 30TH, 1889.

This day came Ralph G. Richard and filed his petition in due form and under oath, alleging that said Jetta Simon, a female resident of this county and of age, is of unsound mind and incapable of taking care of herself or of managing her affairs, and praying that the necessary proceedings may be had so as to have due inquiry and determination as to the truth of said allegation. It is therefore ordered that the 6th day of February, 1889, be appointed as a day for the hearing of said petition, and that a jury be drawn, as the law directs, for the trial of this issue. It is further ordered that a writ be issued to said sheriff requiring him to take the said Jetta Simon so that he have her in this court to be presented at said trial if consistent with the health and safety of said Simon.

26 EXHIBIT "C"—continued.

In the Matter of JETTA SIMON, Alleged *Non Compos Mentis*.

Writ.

STATE OF ALABAMA, }
Mobile County. }

In re Probate Court.

To the sheriff of said county:

Whereas Ralph G. Richard, as the friend of one Jetta Simon, hath this day filed his petition with the judge of said court, alleging that said Jetta Simon is a female lunatic, of the age of forty-nine years, and a resident of this county, and praying that an inquisition of lunacy may be made and had in due form of law to try the truth of said allegations and as — whether the said Jetta Simon is incapable of governing herself and of attending to her affairs; and whereas the judge of said court has by due order entered in the premises appointed the sixth (6th) day of February, 1889, for hearing said petition and for the due trial thereof:

Now, therefore, if it be consistent with the health and safety of said Jetta Simon, you are hereby required to take her body, so that you may have her in said court, to be present at said trial, and before the jury then to be empannelled to make said inquisition.

And have you then and there this writ with your return thereon as to how you have executed the same.

Witness Price Williams, Jr., as judge of said court, at office in the city of Mobile, this the 30th day of January, A. D. 1889.

PRICE WILLIAMS, JR., *Judge.*

Received January 31st, 1889, and on the same day I executed the within writ of arrest by taking into my custody the within-named Jetta Simon and handing her a copy of said writ, and as it is inconsistent with the health or safety of the within-named Jetta Simon to have her present at the place of trial, and on the advice of Dr.

H. P. Hirshfield, a physician whose certificate is hereto attached she is not brought before the honorable court.

W. H. HOLCOMBE, *Sheriff*,
By WM. H. SHEFFIELD, *D. S.*

Mobile, February 5th, 1889.

27 EXHIBIT "E."

In the Matter of JETTA SIMON, Alleged *Non Compos Mentis.*

Certificate of Physician.

MOBILE, ALA., *Jan. 30th*, 1889.

To the sheriff of Mobile county, Ala.:

I, H. P. Hirshfield, a regular physician, practicing in Mobile county, Ala., hereby certify that I am acquainted with Mrs. Jetta Simon, and have examined her condition on yesterday and find that she is a person of unsound mind, and it would not be consistent with her health or safety to have her present in court in any matter now pending.

H. P. HIRSHFIELD, M. D.

Ex. "C"—cont'd.

In the Matter of JETTA SIMON, Alleged *Non Compos Mentis.*

Venire for 24 Jurors.

STATE OF ALABAMA, }
Mobile County. }

In re Probate Court.

To the sheriff of said county, Greeting:

You are hereby commanded to summon the following-named jurors:

1. L. McGlinn,	city.		
2. George W. Threefoot,	"	P. 1,	summoned.
3. John T. Mure,	Co.,	P. 2,	non-resident.
4. Charles Stuart,	city,	P. 2,	summoned.
5. W. J. Jolly,	Co.,	P. 3,	summoned.
6. John T. McGovern,	city,	P. 4,	summoned.
7. John Norville,	"		non-resident.
8. Charles D. Barnes,	"		left at residence.
9. Frank J. Keenan,	"		non-resident.
10. E. Harney (c.),	"	P. 5,	summoned.
11. Mordecai Roberts,	"		non-resident.
12. Alfred Waldauer,	"		non-resident.
13. Wm. H. Bryant, Ex.,	"		summoned.
14. John Pollard, Jr.,	"	P. 6,	summoned.
15. John M. Slaughter,	"		not found; absent from the city.

16. Charles Babbett, " P. 7, left at residence.
17. David E. French, " left at residence.
18. Henry Ortman, " P. 8, summoned.
19. William Fincher, Co., P. 9, summoned.
20. Henry L. Stoutz, Ex., city, summoned.
21. Wm. Cox, " P. 10, summoned.
22. Fred W. Sheppard, " P. 11, summoned.
23. W. R. Gerow, " P. 12, summoned.
24. Alex. Y. Howard, Ex., summoned.

—to enquire into the sanity of one Jetta Simon, an alleged lunatic, of this county, to be and appear in and before the said probate court on the 6th day of February, A. D. 1889, *to* 10 o'clock a. m., then and there to make inquisition and to try the question whether the said Jetta Simon is of an unsound mind and incapable from that cause of governing herself and of managing her affairs, as hath been alleged to the judge of said court by Ralph G. Richard in his
28 petition filed by him in said court as the friend of said Jetta Simon.

And have you then and there this writ, with your return thereon showing how you have executed the same.

Witness Price Williams, Jr., judge of said court, at office, in the city of Mobile, this the 2nd day of February, A. D. 1889.

PRICE WILLIAMS, JR., *Judge.*

Received February 2nd, 1889, and executed, as designated by memoranda made opposite the names herein.

Mobile, February 6th, 1889.

W. H. HOLCOMBE, *Sheriff,*
By WM. H. SHEFFIELD, *D'p'ty.*

Ex. C—cont'd.

Probate Court, February 6th, 1889.

JETTA SIMON, Alleged *Non Compos Mentis*, Estate of.

STATE OF ALABAMA, }
Mobile County. }

In the matter of petition to enquire into her lunacy.

To Fielding Vaughan, Esquire:

You are hereby notified that you have been appointed guardian *ad litem* of Jetta Simon, alleged *non compos mentis*, interested in a certain matter and proceeding in said court, entitled as appears in the caption hereof, and which comes up for hearing on the 6th day of February, A. D. 1889.

Witness Price Williams, Jr., judge of said court, at office, the 6th day of February, A. D. 1889.

Attest: FRANCIS KIERNAN, *Clerk.*

Feb'y 6th, 1889.—I hereby accept service of the above notice, and consent to act as guardian *ad litem* for Jetta Simon.

FIELDING VAUGHAN.

Filed Feb'y 6, '89.

P. WILLIAMS, JR., *Judge.*

Ex. C—continued.

In the Matter of the Petition of RALPH G. RICHARD to Declare Mrs. Jetta Simon *Non Compos Mentis.*

Answer of Fielding Vaughan, Guardian ad Litem for said Simon.

This day comes Fielding Vaughan, and as guardian *ad litem* for Jetta Simon, an alleged lunatic, for answer to the petition of Ralph G. Richard, says that he wholly denies all the matters and things stated and contained in said petition, and requires strict proof to be made thereof according to law.

29 Feb'y 6th, 1889.

FIELDING VAUGHAN,
Guardian ad Litem for Jetta Simon.

Filed Feb'y 6 '89.

P. WILLIAMS, JR., *Judge.*

Ex. C—continued.

JETTA SIMON, Lunatic.

STATE OF ALABAMA, }
Mobile County. }

Probate Court of said County.

FEBRUARY 6TH, 1889.

This being the day appointed, by reference to an entry thereof made upon the minutes of the court on the 30th of January, 1889, for the hearing of the petition of Ralph G. Richard, filed, alleging the lunacy of the said Jetta Simon and praying an inquisition thereof, and it being shown that it would not be consistent with the health and safety of said lunatic to bring her into court at this time, and it appearing that due process had been served upon said lunatic notifying her of this proceeding, now comes the said Richard and a jury of good and lawful men, who reside in the county of Mobile, and who, having been summoned, to wit, John Pollock, Jr., and eleven others, who, having heard the evidence, the arguments of counsel, and the charge of the court in the premises, and being first duly tried, empannelled, and sworn well and truly to make inquisition of the facts alleged in said petition and a true verdict to render according to the evidence, upon their oath say, "We, the jury, find Mrs. Jetta Simon to be of unsound mind."

It is ordered, adjudged, and decreed by the court that said petition and all other proceedings thereon, together with the aforesaid verdict of said jury declaring the said Jetta Simon a lunatic, be recorded.

Ex. C—conti'd.

JETTA SIMON, *Non Compos Mentis*, Estate of.

Appointment of Guardian.

FEBRUARY 11TH, 1889.

This day comes Ralph G. Richard and applies for letters of guardianship over the estate of said lunatic, and he now entering into bond and security in the sum of $7,000.00, with H. J. Simon and M. Goldstein as his sureties, which bond, with said securities, has been taken and approved by the judge of this court, it is ordered and decreed that letters of guardianship over the estate of said Jetta Simon, lunatic, issue to Ralph Richard.

30 Ex. C—cont'd.

STATE OF ALABAMA, }
Mobile County. }

Know all men by these presents that we, Ralph G. Richard, H. J. Simon, & M. Goldstein, all of the county of Mobile, are held and firmly bound unto Price Williams, Jr., judge of the probate court in and for the county of Mobile, and his successors in office, in the sum of seven thousand ($7,000.00) dollars, to be paid to the said judge or his successor in office; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 11th day of February, in the year of our Lord eighteen hundred and eighty-nine.

The conditions of the above obligation are such that whereas the above-bound Ralph G. Richard has been duly appointed guardian over the person and estate of Jetta Simon, *non compos mentis:*

Now, if the said Ralph G. Richard shall well and truly perform all the duties which are or may be by law required of him as such guardian, then the above obligation to be void; otherwise to remain in full force.

RALPH G. RICHARD. [SEAL.]
H. J. SIMON. [SEAL.]
M. GOLDSTEIN. [SEAL.]

Taken and approved 11th day of February, A. D. 1889.
P. WILLIAMS, JR., *Judge.*

Ex. C—cont'd.

THE STATE OF ALABAMA, }
Mobile County. }

Whereas on the eleventh (11th) day of February, 1889, Ralph G. Richard was by the honorable the probate court of Mobile county, State of Alabama, appointed guardian over the person and estate of Jetta Simon, *non compos mentis*, and the said Ralph G. Richard

having complied with the requisites of the law in such cases made and provided, these are therefore to give said Ralph G. Richard, in whose fidelity in this behalf we very much confide, full power and authority to demand, receive, and secure, all and singular, the estate and all debts, dues, and demands whatsoever to said minor belonging, and to do all other acts and things concerning said guardianship in as full and complete a manner as if the same was herein particularly expressed.

Witness Price Williams, Jr., judge of said court, this 11th day of February, 1889.

P. WILLIAMS, JR., *Judge.*

31 Ex. C—cont'd.

In re JETTA SIMON, a *Non Compos Mentis.*

Inventory of Estate of Ward. Filed by Guardian of Ward.

THE STATE OF ALABAMA, }
Mobile County. }

Probate Court.

Inventory of the estate of Jetta Simon, a *non compos mentis.*

There is no personal property of said Jetta Simon, except wearing apparel, that has come to the hands of the guardian.

There is only one piece of real estate, described as follows:

"Beginning at a point on the north line of Church street and west from the northwest intersection of Church and Joachim street and distant therefrom fifty-six feet and nine inches or thereabouts, running thence westerly along the northern line of Church street fifty six feet and nine inches or thereabouts; thence northerly and parallel with Joachim street eighty feet and six inches or thereabouts; thence easterly and parallel with Church street fifty-six feet and nine inches or thereabouts; thence to the point of beginning.

Bounded south by Church street, west by property of Mrs. Fitzsimmons, north by property of John Parham, and east by property late of Mrs. Mary L. Jones, it being the same premises conveyed to Mrs. Elizabeth B. Colomb by W. Jones and Mary L. Jones, his wife, by deed dated 13th April, 1869, and recorded in the probate office of said county, in Book 25, N. S., pp. 423, 424, & 425, and by Wm. J. Brooks and Guy Brooks, his wife, by deed dated 5th April, 1869, and recorded in said Book 25, N. S., at pages 421, 422, and 423, and the same that were afterwards conveyed by said Mrs. Elizabeth B. Colomb and H. O. Colomb, her husband, to the said Mrs. Eliza A. Culver by deed dated the 9th Aug., 1870, and recorded in said probate office, in Book 28, N. S., pp. 65 & 66," said property being in Mobile, Mobile county, Alabama.

THE STATE OF ALABAMA, }
Mobile County. }

Before me, Francis Kiernan, clerk of the probate court in & for said county & State, personally appeared Ralph G. Richard, guardian

of said estate of Jetta Simon, a *non compos mentis*, who, being duly sworn, doth depose and say that the foregoing is a full and complete inventory of the estate of his said ward, consisting only of real estate, which has come to his knowledge or possession.

32 RALPH G. RICHARD.

Sworn and subscribed before me this 12th day of February, A. D. 1889.

FRANCIS KIERNAN, *Clerk.*

Filed February 12th, 1889.

F. KIERNAN, *Clerk.*

Ex. C—cont'd.

In re JETTA SIMON, a *Non Compos Mentis.*

Petition for Sale of Property by Guardian.

THE STATE OF ALABAMA, }
Mobile County. }

In Probate Court, Mobile County.

To the Honorable Price Williams, judge of said court:

Your petitioner, Ralph G. Richard, guardian, duly appointed and qualified in said court, of Jetta Simon, a person of unsound mind, respectfully represents unto your honor that his said ward owns no personal property, as he is informed and believes, except her wearing apparel and a few pieces of household furniture of little value, probably not exceeding a hundred dollars, and has no real estate, except the house and lot as shown by the inventory filed in this court, and which is described as follows:

"Beginning at a point on the north line of Church street and from the northwest intersection of Church and Joachim street and distant therefrom fifty-six feet and nine inches or thereabouts, running thence westerly along the northern line of Church street fifty-six feet and nine inches or thereabouts; thence northerly and parallel with Joachim street eighty feet and six inches or thereabouts; easterly and parallel with Church street fifty-six feet and nine inches or thereabouts; thence to the point of beginning, bounded south by Church street, west by property of Mrs. Fitzsimmons, north by property of John Parham, and east by property late of Mrs. Mary L. Jones, it being the same premises conveyed to Mrs. Elizabeth B. Colomb by W. Jones and Mary L. Jones, his wife, by deed dated 13th April, 1869, and recorded in the probate office of said county, in Book 25, N. S., pp. 423, 424, & 425, and by William J. Brooks and Guy Brooks, his wife, by deed dated 5th April, 1869, and recorded in said Book N. S., No. 25, at pages 421, 422, & 423, and the same that were afterwards conveyed by said Elizabeth B. Colomb and H. O. Colomb, her husband, to the said Mrs. Eliza A. Culver by deed dated the 9th of August, 1870, and recorded

33 in said probate office, in Book 28, N. S., pp. 65 & 66," said property being in Mobile, Mobile county, Alabama.

And your petitioner further shows unto the court that his said ward is a widow and has five children, of whom three are minors, as follows:

Charles Simon, aged about 20 years.
Florence Simon, aged about 13 years.
Nathan Simon, aged about 10 years.

She has also two adult sons, but these are able to and are supporting and maintaining themselves.

And your petitioner shows further unto the court that the said ward is, as he is informed and believes, indebted in a very large sum to Henry J. Simon, which indebtedness was for the support and maintenance of the said ward and her family, and was created before the inquisition of lunacy against her and the appointment of your petitioner as her guardian, and the same, as your petitioner is informed and believes, amounts to about $7,000.00.

Your petitioner shows unto the court that the gross income from the property of his said ward, amounting to only about $350.00 per annum, from which must be paid insurance premiums and taxes, is insufficient either to pay the debt aforesaid or to support and maintain the said ward and her family and to educate her children.

Your petitioner represents that in order to do this it will be necessary to sell said real property hereinbefore described and to apply the proceeds of such sale for the payment of the debts aforesaid and for the support and maintenance of his said ward and her family.

And your petitioner further states to the court that he is advised and believes that the indebtedness to the said H. J. Simon is the only debt owing by his said ward, and that the same can be settled and compromised for any sum over and above $2,000.00 that the said house and lot would sell for not exceeding the amount of his debt; that the said $2,000.00, being such homestead exemption as is allowed her by law, can then be set aside for his said ward and for the support and maintenance of herself and family.

In consideration of all of which your petitioner prays for an order and leave to sell said lot of land with the improvements, and that a day be set for hearing the matter of this petition and such proof as may be submitted in the premises, and that all such orders
34 and decrees may be made as may be requisite to have such sale in legal form.

RALPH G. RICHARD,
G'd'n Jetta Simon, Non Compos Mentis.

Subscribed and sworn to before me this 12th day of February, 1889.

FRANCIS KIERNAN, *Clerk.*

Filed February 12th, 1889.

F. KIERNAN, *Clerk.*

Ex. C—cont'd.

JETTA SIMON, *Non Compos Mentis.* Estate of.

STATE OF ALABAMA, }
Mobile County. }

Probate Court.

FEBRUARY 12TH, 1889.

In the matter of petition to sell lands to pay debts & support of ward's family.

To Fielding Vaughan, Esquire:

You are hereby notified that you have been appointed guardian *ad litem* of Jetta Simon, *non compos mentis;* Florence Simon, & Nathan Simon, minors, under 14 years of age, who are minors interested in a certain matter and proceeding in said court entitled as appears in the caption hereof, and which comes up for hearing on the 7th day of March, 1889.

Witness Price Williams, Jr., judge of said court, at office, the 12 day of February, A. D. 1889.

Attest: F. KIERNAN, *Clerk.*

Feb'y 13th, 1889.—I hereby accept service of the foregoing notice, & consent to act as guardian *ad litem* for said ward in the above matter.

FIELDING VAUGHAN.

Ex. C—cont'd.

In the Probate Court of Mobile County.

In the Matter of the Application of RALPH G. RICHARD, as Guardian of Jetta Simon, a *Non Compos Mentis*, to Sell Lands to Pay Debts and to Support and Maintain Ward's Family.

This day comes Fielding Vaughan, the guardian *ad litem* for said ward, and denies the matters and things set out and statements contained in said application, and requires proof thereof to be made in strict accordance with law.

FIELDING VAUGHAN,
Guardian ad Litem for Jetta Simon.

Filed Feb'y 13, '89.

F. KIERNAN, *Clerk.*

35 Ex. C—cont'd.

JETTA SIMON, *Non Compos Mentis*, as to Sale of Lands to Pay Debts.

FEBRUARY 12, 1889.

This day comes Ralph G. Richard, the guardian of said lunatic, and represents in writing and under oath that his ward does not own sufficient personal property to pay the debts. Wherefore he applies for the sale of certain real estate in his petition described for

that purpose. Said lunatic has five children living, three of whom are minors, viz:

Charles Simon, 20 years of age; Florence Simon, 13 years of age; Nathan Simon, 10 years of age. Her two adult sons are able to care for themselves. It is therefore ordered that the 7th day of March, 1889, be, and it is hereby, appointed for hearing the said application and the proofs which may be submitted in support of the same.

It is further ordered that Fielding Vaughan be, and he is hereby, appointed guardian *ad litem* to represent and protect the minors interested in this proceeding.

Ex. C—cont'd.

STATE OF ALABAMA, }
Mobile County. }

In the Probate Court of Mobile County.

Deposition of Henry J. Simon, a witness sworn and examined at the time and place hereinafter stated, in Mobile, in said State and county, under and by virtue of the annexed commission issued out of the probate court of Mobile, in a certain cause therein pending, wherein Ralph G. Richard, as guardian of Jetta Simon, is petitioner to sell land for payment of debts and support and maintenance of her family.

The said witness, being first duly sworn by me at the office of H. J. Simon & Co., in said city, on the 1st day of March, 1889, doth depose and say as follows:

To the direct intgys he says:

To the first intgy.: 1. My name is Henry J. Simon; I am twenty-nine years of age, and I reside in the city of Mobile, Ala.; I am now engaged in the retail clot-ing business at Pensacola, Florida, though from 1879 until now have been in the wholesale business in Mobile, except for one year—in 1886—when I was in business at Baltimore, Md.; I am the oldest son of Jetty Simon, who is a widow.

She owns a house and lot in Mobile, which is the only property she possesses; she has no income.

Said property is situated on Church street, second west of
36 Joachim street, in the city of Mobile.

This property, in my opinion, is worth four thousand dollars ($4,000.00).

Its rental value is three hundred & fifty dollars ($350.00) per annum.

I support Jetty Simon and her family.

The said family consists of said widow & two minor children.

The minor children are named Florence and Nathan, aged respectively thirteen and ten years, both of whom live with their mother.

My mother has no income or revenue outside of the rental of her property.

Neither of the minor children have any source of income or revenue.

It is absolutely necessary to sell her house and lot, as she would otherwise not be able to maintain and educate her children without assistance or charity from others.

2. My mother is indebted to me to the amount of ($5,703.95) five thousand seven hundred and three & $\frac{95}{100}$ dollars, the same being the amount of disbursements for her support & maintenance by me, as shown by my private books. I herewith attach a statement of the account, showing amounts advanced for her & children, marked Exhibit A.

These disbursements were made by me at her request.

When I first began paying the expenses of my mother's household I did it at the request of herself.

I have until now continued to make said disbursements.

Jetty Simon and her family are not keeping house.

Jetty Simon and her minor children board with me.

I have never received any board nor do I now receive any board from Jetty Simon and family, except as shown by my account hereto attached.

Before Jetty Simon boarded with me her household was managed by nurses and servants, while I advanced the necessary expenses of living, tuition, medical attendance, taxes, &c.

The minor children are now living with me.

3. Jetty Simon's present mental condition is a form of insanity termed by her physicians as acute melancholia.

She is utterly unable to manage her affairs or take care or charge of her family.

37 She requires extraordinary care and attention.

She has no other personal property excepting a limited wardrobe and a few household articles of furniture.

The amount I claim from her is true, correct, and unpaid.

HENRY J. SIMON.

To the cross-interrogatories the said witness, HENRY J. SIMON, says as follows:

To the first cross he saith:

Cross 1. My father died in April, 1879.

One of Jetty Simon's minor children is a boy named Nathan, aged 10 years, who is unable to support himself and has never earned a living.

Cross 2. My claim against Jetty Simon is computed from my books, which show exactly by months the amounts actually paid out by me each year and which were recorded at the time of payment. From this record I have obtained the exact amount I paid out for the support of herself and minor children.

The expenses varied each year.

The most expensive year was May, 1885, to May, 1886.

The least costly year was from May, 1881, to May, 1882.

The cause of the former increase was due to extensive repairs to property, heavy doctor bills, &c.

The small expense was due to my mother's ability to manage her domestic affairs herself, being then in sound health and mind.

I have kept a record of the family's expense since I rented the house.

During this period I have charged the family fifty dollars per month board.

I know this was a reasonable price for the board. I furnished the entire family.

The other expenses I have charged were for wearing apparel, doctor's bills, taxes, &c.

These sums were actually paid out by me.

Special tax for 1888 is unpaid and amounts to thirty-two & $\frac{55}{100}$ dollars.

Insurance to the amount of thirty-seven hundred and fifty dollars ($3,750.00) is carried, and expires December 1st, 1889.

I have credited Jetty Simon with ninety-three hundred
38 and seventy-eight & $\frac{71}{100}$ doll's (9,378.71).

The first credit was forty-two hundred & fifty-eight & $\frac{71}{100}$ dollars ($4,258.71), being the amount of merchandise she turned over to me, representing the half interest owned by my father in the business of M. Simon & Bro.

This was a reasonable value for the things received.

An inventory of the stock of merchandise was taken at the time and ascertained to be so much.

The second credit is for (350.00) three hundred and fifty dollars, being a reasonable rent for the house, and was ascertained by a comparison with the rents received from houses of a like nature and value.

The next credit is for (2,310.00), being board for myself from the date of my father's death until September, 1885.

The next credit is for ($2,460.00), being board for Jacob S. Simon from May 1st, 1879, until April 1st, 1886, and which I assumed and allowed as a credit to my mother.

These credits are reasonable and represent full value for the things received, and the values are fixed by comparison with the same values elsewhere.

I have not charged any interest on either side of my account against Jetty Simon.

If I had charged interest it would create a difference in my favor of twenty-five hundred & twenty-five & $\frac{79}{100}$ dollars ($2,525.79).

Cross 3rd. Jetty Simon owes no one else besides myself.

HENRY J. SIMON.

I, J. I. Clemmons, one of the commissioners in the annexed commission named, hereby certify that Henry J. Simon, the witness who is named in said commission, and who is personally well known to me, appeared before me on the day and at the place hereinbefore stated, and that he was by me first duly sworn according to law and examined on the annexed direct and cross interrogatories, and that he did in answer thereto testify and depose as is set down above, and that his said answers were reduced to writing by said witness

in his own writing and in my presence as the questions were asked him by me and in his own language; that he read over said answers and then and there subscribed them in my presence.

That said statement, hereto attached and marked as "Exhibit" A, is the same as attached by said witness and referred to in his answers.

39

And I further certify that I am neither of counsel nor of kin to any of the parties to the cause nor in anywise interested in the result thereof.

Given under my hand and seal this sixth day of March, A. D. 1889.

J. I. CLEMMONS, [SEAL.]
Commissioner.

Mrs. Jetty Simon, in account with Henry J. Simon, for expenditures made at her request for the support and maintenance of herself & minor children.

DR.

To paid out from May 1st, 1879, to May 1, '80.	$2,061.15	
" " " " May 1, '80, " May 1, '81.	1,676.34	
" " " " May 1, '81, " May 1, '82.	1,106.28	
" " " " May 1, '82, " May 1, '83.	1,668.49	
" " " " May 1, '83, " May 1, '84.	1,953.27	
" " " " May 1, '84, " May 1, '85.	1,774.48	
" " " " May 1, '85, " Oct. 31, '85.	942.71	
" " " " Oct. 1, '85, " M'ch 31, '86.	1,246.78	
Cash remitted from Baltimore from Sep. 3rd, '86, to May 1, '87.....	1,048.16	
April 18, '87, to Feb'y 1, '88 (no claim made).		
" board for family Feb. 1, '88, to Feb. 1, '89.	600.00	
" wearing apparel, medical attendance, &c., for family.....	500.00	
" repairs to house & lot.....	400.00	
" insurance & taxes.....	105.00	
		$15,082.66

CR.

By stock of merchandise sold by Mrs. J. Simon to H. J. Simon, being ½ interest.....	$4,258.71	
By 1 year's house rent, from Feb. 1, '88, to Feb'y 1, '89.....	350.00	
By board for H. J. Simon from May 1, '79, 6 years & 5 months.....	2,310.00	
By board for J. S. Simon from May 1, '79, 6 years & 11 months.....	2,460.00	
		9,378.71
Balance due H. J. Simon.....		$5,703.95

HENRY J. SIMON.

"Exhibit 'A,' J. I. Clemmons, com'r."

Ex. "C"—cont'd.

In Probate Court, Mobile County.

In the Matter of the Application of RALPH G. RICHARD, Guardian of Jetta Simon, a *Non Compos Mentis*, to Sell Land for the Payment of Debts and for the Support and Maintenance of Family of *Non Compos Mentis*.

Interrogatories to be Propounded to Henry J. Simon in the said Matter, the said Witness Being Produced by the said Applicant.

40 Direct interrogatories.

1st. Int. What is your name, age, and residence? What is now your business, and what has it been since 1879? How are you related to Jetta Simon? Is she a widow? What, if any, means of support and property has she? Where is the property situated? What, in your opinion, is said property worth? What is its rental value? Who now supports the said Jetta Simon and her family? Of whom does the family consist? State names and ages. Who of them live with the mother? Has the said Jetta Simon any income or revenue? Have any of her minor children any source of income or revenue? State whether it is necessary to sell the house and lot owned by her; and, if so, why. Would she be able to support and maintain herself and family and educate her children without aid from you or charity from others?

2nd. Is your mother, Jetta Simon, indebted to you? If you answer yes, then state how she became indebted and to what amount. Attach to your answer a statement showing such indebtedness. Who made the disbursements, as shown by your account hereto attached? Were they made by you or on your account? When you first began paying the expenses of Jetta Simon's household at whose request were such disbursements made? Have you continued to make them up to this time? Is said Jetta Simon and family keeping house? If not, with whom does she board? Do you now receive or have you in the past received anything for board, except as shown by your account hereto attached? Before the said Jetta Simon boarded with you, how was her household conducted, and who advanced the funds to pay necessary expenses of the family, tuition, doctor's bills, etc.? With whom are her minor children now living?

3rd. What is Jetta Simon's present mental condition? Is she able to manage her affairs and take charge of her family? Does she require more than ordinary care and attention? Has she any personal property other than wearing apparel and few articles of household furniture? Is the amount claimed by you from her true, correct, and unpaid?

PILLANS, TORREY & HANAW,
Attorneys for Applicant.

The applicant suggests Joseph I. Clemmons or John E. Mitchell as suitable persons to act as commissioners to take the deposition

of the said witness, the said Joseph I. Clemmons and John E. Mitchell and the said Henry J. Simon all residing in Mobile, Alabama.

41 PILLANS, TORREY & HANAW,
Attorneys for Applicant.

Filed Feb'y 13th, 1889.

P. WILLIAMS, JR., *Judge.*

Ex. C—cont'd.

In Probate Court, Mobile County.

In the Matter of the Application of RALPH G. RICHARD, Guardian of Jetta Simon, a *Non Compos Mentis*, to Sell Lands for Payment of Debts and for Maintenance of Ward's Family.

Cross-interrogatories to Henry J. Simon.

When did your father die? Are any of Mrs. Simon's minor children boys? If so, give their names and ages. Are such boys now able to support themselves, and how long have they so been able?

Do they now or have they ever in fact earned anything? How much?

2nd.

Is your statement of the debt you claim of Mrs. Simon itemized, estimated, or approximated? If neither, how was it made up? Were the sums charged in it against her actually paid out by you on her account? Did you keep a record of such charges and enter them as paid by you at the time of payment? Have you taken your statement from such a record or do you merely estimate the expense of maintaining the family for each year? Did such expenses vary from year to year or remain the same? Which was the most costly and which the least expensive year? What caused the difference? Have you kept a record of such expenses since you rented the house? During this latter period what board have you charged? Was that price reasonable for such board as you furnished? What have you charged for other expenses during that time, and were such sums actually paid out by you? Are any taxes unpaid? How much? How much insurance is carried, and when does it expire? Have you allowed Mrs. Simon any credits in your statement? How much is the first credit and for what was it allowed? Was it the reasonable value of the thing for which it was allowed? How was such value ascertained? How much and what is the 2nd credit? Is it the reasonable value of the thing for which it was allowed? How was such value ascertained? How much and what is each of the other credits? Is each reasonable and the full value of the thing for which it was given? How was the value of each fixed?

42 Have you charged any interest on either side of your account with Mrs. Simon? If not, calculate now and tell us

what difference it would make in the balance you claim of your mother.

3rd.

Does Mrs. Simon owe any other person than yourself? If so, whom, how much, and for what?

FIELDING VAUGHAN,
Guardian ad Litem for Mrs. Jetta Simon.

Filed Feb'y 15th, 1889.

FRANCIS KIERNAN, *Clerk.*

Ex. C—cont'd.

STATE OF ALABAMA, }
Mobile County. }

Probate Court.

In the Matter of RALPH G. RICHARD, Guardian of Jetta Simon, a *Non Compos Mentis*, to Sell Land for the Payment of Debts and for the Support and Maintenance of Family of *Non Compos Mentis.*

To Joseph I. Clemmons or John E. Mitchell, Esqrs., Greeting:

Know ye that we, in confidence of your prudence and fidelity, have appointed you, and by these presents do give you or any one of you, full power and authority to take the deposition of Henry J. Simon, witness on the part of the petitioner, in a cause pending in our said court, entitled as appears in the caption hereto, and therefore we command you or any of you that, at such time and place or times and places as you may appoint, you do cause the said Henry J. Simon to come before you or either of you and then and there examine him on oath on the interrogatories and cross-interrogatories annexed, and that you or either of you do take such examination and reduce the same into writing and return the same, annexed to this writ, closed up, under your seals or the seal of any of you, into our said probate court with all convenient speed, that the same may be read in evidence on the trial of the cause aforesaid.

Witness Price Williams, Jr., judge of said court, this 16th day of February, A. D. 1889.

43 Attest: PRICE WILLIAMS, JR., *Judge.*

Ex. C—cont'd.

In the Matter of the Petition of RALPH G. RICHARD, Guardian of Jetta Simon, a *Non Compos Mentis*, to Sell Lands for Payment of Debts Incurred before the Inquisition of Lunacy and for the Maintainence of the Family.

This day having been regularly appointed, less than 30 days and more than 20 days from the filing of the said petition, for the hearing thereof, the said petition alleging that the sale of the property

hereinafter described is necessary for the payment of debts of the said Jetta Simon, a *non compos mentis*, incurred before the inquisition of lunacy and for the maintenance of the said ward of said guardian and of said ward's family, now comes the petitioner, Ralph G. Richard, and moves the court for an order to sell, in accordance with said petition, the following-described real estate in said county, to wit: Beginning at a point on the north line of Church street and from the northwest intersection of Church and Joachim street- a distance therefrom fifty-six feet and nine inches or thereabouts, running thence westerly along the northern line of Church street fifty-six feet and nine inches or thereabouts; thence northerly and parallel with Joachim street eighty feet and six inches or thereabouts, easterly and parallel with Church street fifty-six feet and nine inches or thereabouts; thence to the place of beginning; bounded south by Church street, west by property of Mrs. Fitzsimmons, north by property of John Parham, and east by property of the late Mrs. Mary L. Jones, it being the same premises conveyed to Mrs. Elizabeth Colomb by W. Jones and Mary L. Jones, his wife, by deed dated April 13th, 1869, and recorded in the probate office of said county in Book 25, N. S., pp. 423 & 425, and by William J. Brooks and Guy Brooks, his wife, by deed dated 5th April, 1869, and recorded in said Book N. S., No. 25, at pages 421, 422, & 423, and the same that were afterwards conveyed by said Elizabeth B. Colomb and H. O. Colomb, her husband, to the said Mrs Eliza A. Culver, by deed dated the 9th of August, 1870, and recorded in said probate office in Book 28, N. S., pp. 65 & 66.

44 And also came Fielding Vaughan, Esqr., heretofore appointed guardian *ad litem* for the said Jetta Simon, who had been heretofore adjudicated *non compos mentis*, to represent and protect her interest in the matter of said petition and who has duly filed his answer in writing, as such guardian *ad litem*, denying the allegations contained in said petition and contesting the same, and the said matters alleged in said petition having been duly proven to the satisfaction of the court by the deposition of Henry J. Simon—

It is therefore ordered, adjudged, and decreed that the said petition be granted, and that the said property hereinbefore described be sold for the payment of the debts of the said Jetta Simon and the maintenance of herself and family, and the said Ralph G. Richard, guardian, is hereby ordered to sell the above-described land at public outcry in front of the court-house door, at Mobile, in said county, in manner and form as the law directs in such cases, after having first given notice for thirty days by advertisement for four consecutive weeks in some newspaper published in Mobile county of the time, place, and terms of sale, said sale to be for cash.

And it appearing that said property exceeds in value what said Jetta Simon would be entitled to claim as exempt, it *or* ordered that two thousand dollars out of the proceeds of said sale shall be set apart by said guardian and used for the security and maintenance of the said Jetta Simon — her family, and the excess over and

above the two thousand dollars be applied to the payment of the existing debts of the said Jetta Simon.

Mobile, Ala., March 7th, 1889.

"EXHIBIT E."

Certificate of Publication.

THE STATE OF ALABAMA, }
Mobile County. }

W. E. Clow, being duly sworn, deposes and says that he is the clerk of the Mobile Item, a newspaper published at Mobile, in the county of Mobile, in the State of Alabama, and that the notice of the guardian sale of Jetta Simon, Ralph G. Richard, g'd'n, a copy of which is hereunto attached, was first published on the 16th day of Mar., 1889, and was published in each weekly issue of said newspaper thereafter for the full period of 4 weeks, the last publication thereafter being in the issue dated the 6th day of Apr., 1889.

45 W. E. CLOW.

Sworn and subscribed to before me this — day of ——, 188–.

——— ———.

To the above paper is attached the following newspaper clipping, viz:

"*Notice of Guardian's Sale.*

Nat Strauss, auctioneer.

Under and by virture of an order and decree of the Honorable Price Williams, Jr., judge of the probate court of Mobile county, I will sell at public auction for cash, in front of the court-house door of Mobile county, Ala., on Monday, April 15th, 1889, at 12 o'clock noon, all and singular the following described property, situated in Mobile, Mobile county, Ala., and described as follows, to wit: 'Beginning at a point on the north line of Church street and from the northwest intersection of Church and Joachim street and distant therefrom fifty-six feet and nine inches or thereabouts, running thence westerly along the northern line of Church street fifty-six feet and nine inches or thereabouts; thence northerly and parallel with Joachim street eighty feet and six inches or thereabouts; easterly and parallel with Church street fifty-six feet and nine inches or thereabouts; thence to the point of beginning, bounded south by Church street, west by property of Mrs. Fitzsimmons, north by property of John Parham, and east by property late of Mrs. Mary L. Jones, it being the same premises conveyed to Mrs. Elizabeth B. Colomb by W. Jones and Mary L. Jones, his wife, by deed dated 13th April, 1869, and recorded in probate office of said county in Book 24, N. S., pp. 423, 424, and 425, and by William J. Brooks and Guy Brooks, his wife, by deed dated 5th April, 1869, and recorded in said Book N. S. 25, at pages 421, 422, and 423, the same that were after-

wards conveyed by said Elizabeth B. Colomb and H. O. Colomb, her husband, to the said Mrs. Eliza A. Culver by deed dated the 9th of August, 1870, and recorded in said probate office in Book 28, N. S., pp. 65 & 66.'

RALPH G. RICHARD,
Guardian of Jetta Simon, a Non Compos Mentis."

11–4t.

EXHIBIT C—cont'd.

STATE OF ALABAMA, }
Mobile County. }

To the Hon. Price Williams, judge of probate of said county:

46 The undersigned, guardian of Jetta Simon, a *non compos mentis*, respectfully reports that in pursuance of an order heretofore made by said court on, to wit, the seventh day of March, 1889, authorizing the undersigned to sell certain realty belonging to his said ward, after having given due and legal notice for thirty days by advertising the same for four consecutive weeks in the Mobile Item, a newspaper published in Mobile county, previous to the day of sale, setting forth the time, place, and terms of sale, on Monday, the 15th day of April, 1889, the day and at the place appointed for said sale, did offer said realty for sale at public outcry, and at said sale Henry J. Simon, being the highest, best, and last bidder therefor, became the purchaser of all and singular that certain piece, parcel, or lot of land situated in the city and county of Mobile, Alabama, bounded and described as follows, to wit: Beginning at a point on the north line of Church street and west from the northwest intersection of Church and Joachim streets and distant therefrom fifty-six feet and nine inches or thereabouts, running thence northerly and parallel with Joachim street eighty feet and six inches or thereabouts; thence easterly and parallel with Church street fifty-six feet and nine inches or thereabouts; thence to the place of beginning, bounded south by Church street, west by property of Mrs. Fitzsimmons, north by property of John Parham, and east by property late of Mrs. Mary L. Jones, it being the same premises conveyed to Mrs. Elizabeth B. Colomb by W. Jones and Mary L. Jones, his wife, by deed dated 13th April, 1869, and recorded in the probate office of said county, in Book 25, N. S., pp. 423, 424, & 425, and by William J. Brooks and Guy Brooks, his wife, by deed dated 5th April, 1869, and recorded in said Book 25, N. S., at pages 421, 422, & 423, and the same that were afterwards conveyed by said Mrs. Elizabeth B. Colomb and H. O. Colomb, her husband, to the said Mrs. Eliza A. Culver, by deed dated the ninth August, 1870, and recorded in said probate office in Book 28, N. S., pp. 65 & 66, at the price of $ five thousand and one hundred dollars.

The said guardian further reports that said Henry J. Simon has complied with the terms of said sale, and has paid in cash the entire amount of said purchase-money, and that said sale was fairly conducted, and that said realty was sold for an amount equal to the fair value of the land. Wherefore the undersigned, as said

guardian, respectfully prays that said sale be in all things
47 confirmed and made good, and that an order be granted authorizing him as such guardian to execute titles to the said Henry J. Simon for the said real estate purchased by him as aforesaid.

All of which is respectfully submitted.

RALPH G. RICHARD.

Sworn and subscribed before me this sixth day of May, 1889.

FRANCIS KIERNAN, *Clerk.*

Filed May 6th, 1889.

F. KIERNAN, *Clerk.*

Ex. C—cont'd.

JETTA SIMON, *Non Compos Mentis.*

Report of Sale of Real Estate.

MAY 6TH, 1889.

This day comes Ralph G. Richard, the guardian of said *non compos mentis*, and represents, in writing and under oath, that on the 15th day of April, 1889, in obedience to the order of this court, he proceeded and sold at public outcry, in front of the court-house of said county, the real property of said *non compos mentis*, fully described in the order of sale, and that Henry J. Simon became the highest and best bidder for the sum of $5,100.00. It is ordered that said report of sale be set for consideration on the 11th of May, 1889.

Ex. C—cont'd.

JETTA SIMON, *Non Compos Mentis*, Estate of.

Report of Sale.

MAY 11TH, 1889.

This day comes Ralph G. Richards, guardian of said Jetta Simon, and files his report in writing and under oath, setting forth, among other things, that on Monday, the 15th day of April, 1889, within the legal hours of sale and in strict accordance with all and singular the terms and requirements of the former order and decree of this court granted and entered in the premises on the 7th day of March, 1889, he proceeded and sold at public outcry, in front of the court-house in this county, the lands set forth and particularly described in said former order and decree, and that said land was purchased at said sale by Henry J. Simon for the sum of five thousand and one hundred dollars; and it appearing to the satisfaction of the court from said report and the evidence now therewith submitted that said sale was fairly conducted, that said amount *was* paid for
said land by said Henry J. Simon was the highest and best
48 bid for the same, and that the said sum so paid is equal to the fair value of said lands, and that the terms of sale as pre-

scribed by the court have been complied with, and that the purchase-money has been paid, it is ordered, adjudged, and decreed that the said sale be, and the same is hereby, approved and in all things ratified and confirmed by the order and authority of this court.

It is further ordered, adjudged, and decreed that the said Ralph G. Richard as such guardian, as aforesaid, be authorized, and he is hereby ordered, to convey by proper deed to the said Henry J. Simon all right, title, and interest which the said Jetta Simon, his ward, had in such lands at the time of said sale.

It is further ordered that said report and all other papers on file relating to this proceeding be recorded.

It is further ordered that said guardian pay the costs of this proceeding to be allowed to him out of the estate of his said ward.

When the said agreement and exhibits were offered, as aforesaid, by the defendant the plaintiff objects to the proceedings had in the probate court to decree Jetty Simon a lunatic, because said proceedings did not constitute due process of law:

1st. In that there was no process issued notifying Jetty Simon to be present at the trial of the inquest of lunacy that was held.

2nd. In that no provision was made in or by said proceedings whereby said Jetty Simon might be present at the inquest of lunacy that was held.

3rd. In that the writ of arrest issued for the body of Jetty Simon was conditional in form and conferred upon the sheriff the power to determine whether it should be executed or not.

4th. In that the writ of arrest left it to the judgment of the sheriff whether the said Jetty Simon should be allowed to appear at the trial of the inquest of lunacy.

5th. In that the writ of arrest authorized the sheriff to restrain Jetty Simon of her liberty and deprived her of the opportunity to be heard at the inquest of lunacy.

6th. In that the sheriff's return shows that under the writ of arrest he restrained Jetty Simon of her liberty and did not permit her to be present at the trial of the inquest of lunacy.

7th. Because the statute under which Jetty Simon was re-
49 strained of her liberty and deprived of her property is in conflict with article 5 — the amendment to the Constitution of the United States, which provides, "Nor be deprived of life, liberty or property without due process of law," and in conflict with article *IVX* of the amendment to said Constitution:

1*a*. In that it authorizes a citizen to be deprived of his or her liberty without due process of law.

2*a*. In that it authorizes a citizen to be deprived of his or her property without due process of law.

8th. Because said proceedings in the probate court are irrelevant and immaterial to any issue in the cause.

The court overruled the plaintiff's objections to said proceedings; to such ruling of the court the plaintiff then and there excepted.

Thereupon the defendant read in evidence said agreement to the jury, with the exhibits thereto attached.

This was all of the evidence in the cause.

The plaintiff then requested the court in writing to charge the jury as follows: "If the jury believe all of the evidence in the case they ought to find a verdict for the plaintiff for the lands described in the complaint."

The court refused to give said charge and endorsed its refusal thereon and signed such refusal, and to the refusal to give said charge the plaintiff excepted.

The defendant thereupon asked the court to charge the jury as follows: "If the jury believe all of the evidence in the case they ought to find a verdict for the defendant." The court gave said charge and endorsed the same as given and signed his name thereto, and to the giving of this charge at the instance of the defendant the plaintiff excepted.

The plaintiff now tenders this her bill of exceptions, and prays that the same may be allowed and signed in term time, which is accordingly done this the 30th day of December, 1898.

WM. S. ANDERSON,
Judge of the Circuit of Mobile County.

Filed in office December 30th, 1898.

B. F. JACKSON, *Clerk.*

50 *Security for Costs of Appeal.*

JETTA SIMON
vs.
JOHN N. CRAFT.

Security for costs upon appeal to the supreme court of Alabama.

We, Jetty Simon, S. Haas, and Walter Mitchell, acknowledge ourselves sureties for the costs of the appeal of Jetta Simon to the supreme court of Alabama from the judgment which was rendered in the circuit court of Mobile county against the said plaintiff in the above-entitled cause on the 13th day of December, 1898.

Witness our hands this the 20th day of January, 1899.

JETTY SIMON.
S. HAAS.
WALTER MITCHELL.

Filed in office February 20th, 1899.

B. F. JACKSON, *Clerk.*

Citation in Appeal.

THE STATE OF ALABAMA,
Mobile County.

Circuit Court.

To the sheriff of Mobile county, Greeting:

Whereas at a term of the circuit court of Mobile for Mobile county, held on the 4th Monday after the 4th Monday in October, 1898, in

a certain cause in said court wherein Jetty Simon was plaintiff and John N. Craft was defendant, a judgment was rendered against said Jetty Simon, to reverse which judgment the said Jetty Simon has on this day applied for and obtained from this office an appeal, returnable to the present term of our supreme court of the State of Alabama, to be held at Montgomery on the 13th day of March next, being the first Monday after the expiration of 20 days from date of appeal, and the necessary bond having been given by the said Jetty Simon, with S. Haas and Walter Mitchell, as sureties:

Now, you are hereby commanded, without delay, to cite the said John N. Craft or Bestor & Gray, attorneys, to appear at the present term of our said supreme court to defend against the said appeal, if they think proper.

Witness B. F. Jackson, clerk of the circuit court of said county, this 20th day of February, A. D. 1899.

Attest:

B. F. JACKSON, *Clerk.*

51 *Sheriff's Return.*

Received February 21, 1899, and on same day I served a copy of the within citation on Jas. W. Gray, one of the firm of Bestor & Gray.

CHAS. E. McLEAN, *Sheriff,*
By M. I. GOLDSMITH, *D. S.*

Certificate of Appeal.

In Circuit Court of Mobile County.

JETTY SIMON
v.
JOHN N. CRAFT, Substituted Defendant in Place of Charles H. Brown, Original Defendant.

I, B. F. Jackson, clerk of the circuit court in and for Mobile county, State of Alabama, do hereby certify that in the above-entitled cause a judgment was rendered by the circuit court in and for Mobile county, State of Alabama, in favor of John Craft, substituted defendant in place of Charles H. Brown, original defendant, and against Jetty Simon on the 13th day of December, A. D. 1898, for costs of court, and that on the 20th day of February, A. D. 1889, Jetty Simon applied for and took an appeal from said judgment and gave security for costs of appeal, with S. Haas and Walter Mitchell as security; which said appeal was made returnable to the 13th day of March next (being the first Monday after the expiration of 20 days from date of appeal) of the present term of the supreme court of the State of Alabama.

Witness my hand this the 28th day of February, A. D. 1899.

Attest:

B. F. JACKSON, *Clerk.*

Filed in office February 28th, A. D. 1899.

B. F. JACKSON, *Clerk.*

Clerk's Certificate to Transcript.

THE STATE OF ALABAMA, }
Mobile County. }

I, B. F. Jackson, clerk of the circuit court in and for said State and county, do hereby certify that the foregoing pages numbered from 1 (one) to 46 (forty-six), both inclusive, contain a full, true, and correct transcript of the record and proceedings had in the said circuit court in a certain cause therein lately pending, wherein Jetty Simon was plaintiff and John N. Craft, substituted defendant in place of Charles H. Brown, original defendant, was defendant, as the same remains of record in my office.

52

Seal Circuit Court, Mobile County, Ala.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at office in the city of Mobile, this the 6th day of March, A. D. 1899.

B. F. JACKSON,
Clerk Circuit Court, Mobile County, Alabama.

53 *Assignments of Error.*

Now comes the appellant, Jetty Simon, and says that there is manifest error in the record and proceedings in the circuit court of Mobile county, and assigns the following errors, viz:

1st. The court erred in overruling the appellant's first objection to the proceedings had in the probate court to decree Jetty Simon a lunatic (Record, page 43).

2nd. The court erred in overruling the appellant's second objection to the proceedings had in the probate court to decree Jetty Simon a lunatic (Record, page 43).

3rd. The court erred in overruling the appellant's third objection to the proceedings had in the probate court to decree Jetty Simon a lunatic (Record, page 43).

4th. The court erred in overruling the appellant's fourth objection to the proceedings had in the probate court to decree Jetty Simon a lunatic (Record, page 43).

5th. The court erred in overruling the appellant's fifth objection to the proceedings had in the probate court to decree Jetty Simon a lunatic (Record, page 43).

6th. The court erred in overruling the appellant's sixth objection to the proceedings had in the probate court to decree Jetty Simon a lunatic (Record, page 43).

7th. The court erred in overruling the appellant's seventh objection to the proceedings had in the probate court to decree Jetty Simon a lunatic (Record, page 43).

8th. The court erred in overruling the appellant's eighth objection to the proceedings had in the probate court to decree Jetty Simon a lunatic (Record, page 44).

9th. The court erred in permitting the defendant, against the ob-

jection of the plaintiff, to read in evidence the said proceedings in the probate court (Record, page 44).

10th. The court erred in refusing the written charge requested by the plaintiff (Record, page 44).

11th. The court erred in giving the charge which was requested by the defendant, and by which it instructed the jury as follows, viz: "If the jury believe all of the evidence in the case, they ought to find a verdict for the defendant" (Record, page 44).

GREGORY L. & H. T. SMITH,
Attorneys for Appellant.

54 Supreme Court of Alabama, Wednesday, April 5, 1899, 1 Div., 19.

JETTY SIMON
v.
JOHN N. CRAFT.

Appeal from Mobile circuit court.

Come the parties, by attorneys, and submit this cause on briefs for decision.

Supreme Court of Alabama, November 23rd, 1899, 1 Div., 19.

JETTY SIMON
v.
JOHN N. CRAFT.

Appeal from Mobile circuit court.

Come the parties, by attorneys, and the record and matters therein assigned for errors being submitted on briefs and duly examined and understood by the court, it is considered that in the record and proceedings of the circuit court there is no error. It is therefore considered that the judgment of the circuit court be in all things affirmed. It is also considered that the appellant and S. Haas & Walter Mitchell, sureties on the appeal bond, pay the costs of appeal of this court and of the circuit court.

55 *Agreement.*

In the Supreme Court of Alabama, 1 Division, 19.

JETTA SIMON, Appellant,
v.
JOHN N. CRAFT, Appellee.

It is hereby agreed by and between the attorneys of record in the above-entitled cause that on January 9th, 1896, John N. Craft, the present appellee, filed in the circuit court of Mobile county the following appearance and plea, viz:

"*Appearance.*

STATE OF ALABAMA, }
Mobile County. }

Circuit Court, Fall Term, 1895.

JETTA SIMON
vs.
CHARLES H. BROWN; JOHN N. CRAFT, Landlord, Substituted on His Motion.

MOBILE, *Jan'y 9th*, 1896.

We appear for John N. Craft, defendant, substituted on his own motion for Charles H. Brown, his tenant, and pleads in short, by consent, not guilty, and suggests and shows as a suggestion on the record that said defendant, Craft, hath held and does hold possession of the premises sued for under color of title in good faith.

PILLANS, TORREY & HANAW,
OVERALL, BESTOR & GRAY,
Att'y- for Defendant.

Filing.

Filed in office Jan'y 9, 1896.

B. F. JACKSON, *Clerk.*"

It is further agreed by and between the attorneys of record in the above-entitled cause that the transcript in the matter of the present appeal, in which Jetta Simon is the appellant and John N. Craft is the appellee, shall be read as if the said appearance and plea were inserted therein on page 2, just above the word "judgment," where the same appears on the margin of said transcript, and that said transcript shall be taken and considered in all respects as if the said appearance and plea had been originally written therein and formed part thereof, and that as thus amended and read the said transcript contains a full, true, and perfect transcript of the record and proceedings had in the said circuit court of Mobile county in a certain cause therein lately pending, wherein Jetta Simon was plaintiff and John N. Craft defendant, he having been substituted as landlord upon his own motion as the de-
56 fendant in the place and stead of Charles H. Brown, the original defendant, and that the record of which said transcript is a copy now remains in the office of the clerk of the circuit court of Mobile county.

GREGORY L. & H. T. SMITH,
Attorneys for Appellant.
PILLANS, TORREY & HANAW,
BESTOR & GRAY,
Att'ys for Appellee.

57 THE STATE OF ALABAMA,
Judicial Department.

The Supreme Court of Alabama, Special Term, October, 1898, 1 Div., 910.

JOHN N. CRAFT
v.
JETTA SIMON.

Appeal from Mobile circuit court.

COLEMAN, *J.:*

Jetta Simon, the appellee, sued in ejectment to recover a certain lot of land. The facts were substantially agreed upon, and upon the evidence the court instructed the jury to find for the plaintiff. The conclusion of the court from the evidence is questioned by the assignments of error. The land sued for at one time belonged to the plaintiff, and the issue involved was whether the defendant had acquired her title.

Upon proceedings instituted in the probate court of Mobile county, Jetta Simon had been declared to be of unsound mind, and one Ralph G. Richard was appointed her guardian. It was upon his petition as guardian that the land was sold under and by virtue of a decree of the probate court. The defendant Craft became the purchaser, paid the purchase-money, the sale was confirmed, and a deed duly executed to him. The regularity of the petition for the sale of the land, the proof in support of it, the confirmation and the execution of the deed to the purchaser are not questioned. The real question is whether Jetta Simon was legally declared to
58 be of unsound mind. This being established, the remainder of the proceedings, including the acquisition of title by the defendant, cannot be assailed. The sufficiency of the petition to institute an inquiry into the soundness of mind of Jetta Simon was not questioned in the court below, nor has it been questioned in the argument of counsel on this appeal.

It is contended that the authority of the court to appoint a guardian being dependent upon the fact that Jetta Simon was legally declared to be of unsound mind, unless the record furnishes the evidence for the exercise of the authority, the appointment itself must fall, and if there was no legally appointed guardian, then there could be no valid sale upon his petition. Eslona *v.* Lepretre, 21 Ala., 504; Moody *v.* Bibb, 50 Ala., 245; Walton *v.* Henderson, 62 Ala., 426. This is the argument of appellee. Conceding the proposition to be sound, the question for consideration, as we have stated it, is whether Jetta Simon was legally and properly found and declared to be of unsound mind so as to authorize the appointment of a guardian.

It is said that the court had no jurisdiction to make the appointment: First, because no jury constituted as required by law to make inquisition of lunacy was ever drawn, summoned, or empanneled; second, because no opportunity was afforded to appellee to be heard at the inquisition; third, because no verdict was rendered, in the

proceedings to declare her a lunatic, ascertaining the jurisdictional facts or justifying the appointment of a guardian.

Section 787 of the Code is as follows: "Jurdisiction of courts of probate.—Courts of probate have, in the cases defined by law, original jurisdiction of—

"Subdiv. 6. The appointment and removal of guardians for minors and persons of unsound mind."

The fact that the constitution granted the General Assembly power to establish courts of probate, with general jurisdiction for the grant of letters testamentary, etc., furnishes no argument that the General Assembly is denied the power to invest probate courts with original jurisdiction in the matter of persons of unsound mind. State *ex rel.*, etc., *v.* Sayre, in MS.

The jurisdiction to appoint guardians for persons of unsound mind is as extensive as in the case of probate of wills, the
59 granting of letters testamentary, sales of property of intestates, allotment of dower, and partition of lands, all of which are enumerated, with other subject-matters of jurisdiction, under said section 787. Said section 787 and sections 2390, 2391, 2392 declare that the probate court has authority, and it is the duty of the court, to appoint guardians for persons of unsound mind, and although the statute provides that a guardian shall not be appointed "until an inquisition has been had and taken as hereinafter directed," the proceedings are, nevertheless, before the probate court as a court, and the issues are determinable in that court. The jurisdiction attaches, both as to the subject-matter and the person, upon the filing of a proper petition and the issuance and service of notice upon the party to be affected in the manner prescribed by the statute. The petition is in strict accordance with section 2392, Code of 1886, which prescribes the allegations that the petition shall contain in the inquisition proceedings.

As to the first ground of objection, that no jury was summoned as provided by law, section 2393 of the Code provides that the jury must consist of "twelve disinterested persons of the neighborhood" of the alleged unsound person. If there was a special statutory tribunal, of which the jury constituted a part, to determine the issues, as we understand counsel for appellee to insist, there would be some force in the argument; but if the issue is to be tried before the probate court, as we have determined, then the statute of 1892–'3, pp. 501, 509, must control. This statute provides how the jury shall be drawn whenever an issue is to be tried by a jury in the probate court of Mobile county. The jury seems to have been drawn in accordance with the statute. We are of opinion the objection is not well taken.

The second ground of objection is that the appellee had no opportunity to be heard at the inquisition. This objection is based upon the character and wording of the writ directed to the sheriff. The provision of the statute is that the judge must "issue a writ, directed to the sheriff, to take the person alleged to be of unsound mind, and, if consistent with his health or safety, have him present at the place of trial." The writ that issued, after setting out the facts

averred in the petition, proceeded: "Now, therefore, if it be
60 consistent with the health and safety of said Jetta Simon, you are hereby required to take her body so that you may have her in said court, etc." The statute is that the sheriff be directed to take her body, and if consistent with health, etc. By the statute it is made the duty of the sheriff to take the body without condition, and, if consistent with health and safety, to — her present at the trial. The writ issued, directed to the sheriff, "if consistent with health and safety, to take her body, etc." The return of the sheriff shows that the writ was executed in accordance with the statute. It is: "I executed the within writ of arrest by taking into my custody the within-named Jetta Simon and handing her a copy of said writ, and as it is inconsistent with the health or safety * * * to have her at the place of trial * * * she is not brought before the court." Technically the writ of the judge was not accurately correct. Its meaning, however, is evident. The sheriff's return was complete and regular in every respect. We do not doubt she was brought into court in the manner prescribed by statute, and that she was subject to its jurisdiction. The second objection cannot be sustained.

The third objection finds some support in the phraseology of the statutes and has been forcibly and ingeniously presented. After a careful consideration of the statutes enacted from 1866 to the adoption of the provisions of the Code of 1886, defining and regulating inquisitions of lunacy and appointment of guardians for persons of unsound mind, we are led to the conclusion that the purpose and intention of the legislature by the adoption of the Code statutes was to declare the whole law upon the subject, and thereby repeal all former statutes in relation thereto. Applying the same rules of construction to the statutes which confer jurisdiction upon the probate courts in the matter of the appointment of guardians for persons of unsound mind as are applied to like statutes, which confer jurisdiction in matters of partition of lands, etc., we hold that upon the filing of a proper petition and the service of summons and notice in the manner prescribed the jurisdiction of the court attaches and its conclusions are not void on collateral attack. Jurisdiction having attached, the failure of the decree to ascertain that the jurisdictional facts had been proven would not affect the validity of the
61 decree. Pollard *v.* Mortgage Co., 103 Ala., 289, and authorities cited. Errors and irregularities must be corrected by direct appeal or writ of certiorari. Any other view would greatly embarrass guardians appointed by the court in such cases and deter purchasers at sales, though ordered by the court, and would not be reconcilable with well-settled principles applying in cases in which there does not seem to be any valid reasons for a distinction. Fore *v.* Fore, 44 Ala., 478; Campbell *v.* Campbell, 39 Ala., 312; Pollard *v.* Am. F. L. M. Co., 103 Ala., 289; Kling *v.* Connell, 17 So. Rep., 121; Landford *v.* Dunklin, 71 Ala., 603.

The jury be their verdict found "Mrs. Jetta Simon to be of unsound mind." The statute requires the court to appoint guardians for persons of "unsound mind." The finding of the jury was suffi-

cient, at least on collateral attack, to authorize the appointment. The court erred in giving the affirmative charge requested by the plaintiff.

There was no provision in the statute which conferred jurisdiction upon chancellors to remove the disabilities of coverture prescribing the constituents of a petition for such relief. Had there been, the sufficiency of a petition which complied with such requirements would not have been questioned. The petition in the present case strictly complied with the statute, Code, section 2392, *supra*. Moreover, the statute conferring jurisdiction upon the probate court to make inquisition in such cases is broader in terms than the statute which conferred jurisdiction upon chancellors to grant relief from the disabilities of coverture.

Reversed and remanded.

62 THE STATE OF ALABAMA, *Judicial Department.*

The Supreme Court of Alabama, November Term, 1896, 1 Div.

JOHN N. CRAFT *v.* JETTA SIMON.

Appeal from Mobile circuit court.

HEAD, *J.*, dissenting:

The question in this case is whether or not the probate court had jurisdiction to appoint Ralph G. Richards guardian of the person and estate of Jetta Simon, alleged to have been a person of unsound mind.

It is not disputable that the jurisdiction of that court of the appointment of guardians of persons of unsound mind, being statutory, is special and limited, and that every fact made by the statute a prerequisite to the exercise of the jurisdiction must appear affirmatively upon the face of the court's proceedings in order to uphold the validity of the appointment.

The statute by which the validity of the appointment now in question is to be tested is contained in the article and chapter of the Code of 1886, beginning with section 2390. That section (2390) provides that "the court of probate has authority and it is a duty to appoint guardians for persons of unsound mind residing in the county having an estate, real or personal, and of persons of unsound mind residing without the State having within the
63 county property requiring the care of a guardian under the limitations and in the mode hereinafter prescribed."

Thus we see the requisites defined by this section to be established in the mode prescribed by subsequent provisions of the article are: 1, that the person is of unsound mind; 2, that he or she resides in the county where the proceeding is had, and, 3, that he or she has an estate, real or personal; or, 1, that the person is of unsound

mind; 2, that he or she resides without the State, and, 3, that he or she has property in the county requiring the care of a guardian.

Section 2392 provides that "upon the petition of any of the relatives or friends of any person alleged to be of unsound mind, setting forth the facts and name, sex, age and residence of such person, accompanied by an affidavit that the petitioner believes the facts therein stated to be true, the court of probate of the county in which such person alleged to be of unsound mind resides, must appoint a day, not more than ten days from the presentment of such petition, for the hearing thereof."

Thus we see that the facts required by sections 2390, as above stated, are required to be set out in the petition, and in addition thereto the petition must show that it is filed by a relative or friend of the person alleged to be of unsound mind, and must set forth the name, sex, and age of such person. These are the jurisdictional facts required to be set forth as the basis of the inquisition and ascertainment by the verdict of a jury, whether or not they are true. Thus section 2394 requires that a "jury must be impaneled and sworn well and truly to make inquisition of the facts alleged in the petition, and a true verdict render according to the evidence;" and section 2395 provides that "if the jury find by their verdict that the facts alleged in the petition are true, and that such person is of unsound mind, the court must cause the petition and all the proceedings thereon to be recorded, and appoint a suitable guardian;" and section 2391 declares that a guardian for a person alleged to be of unsound mind residing in the county must not be appointed until an inquisition has been had and taken as directed in the article.

Were these proceedings conformed to in the case of Jetta Simon, so as to confer jurisdiction upon the probate court to appoint
64 Richards her guardian?

We will look first at the petition and see if it shows the jurisdictional facts which the statute requires it to show. It shows that it was filed by said Richards, and that he was a friend of said Jetta and her family. It states the age and sex of said Jetta; her residence in Mobile county, where the proceeding was had, and that she is of unsound mind and incapable of managing her affairs. This is all, save the prayer. It therefore omits one of the most vital jurisdictional facts. Upon reading section 2390 it is seen that the jurisdiction is not conferred to appoint guardians for persons of unsound mind generally, but for such persons, if residing in the county, having an estate, real or personal; or, if residing without the State, having within the county property requiring the care of a guardian. It nowhere appears in the proceedings that Jetta Simon had an estate, real or personal, anywhere.

The case is stronger against the validity of the proceeding than that of Cohen *v.* Woolner, 72 Ala., 233. There the statute was, "That the several chancellors in this State, either in term time or vacation, are hereby authorized and empowered to relieve married women of the disabilities of coverture, as to their statutory and other separate estates, so far as to invest them with the right to buy,

sell, hold, convey and mortgage real and personal property, and to sue and be sued as *femmes sole*, whenever the wife by her next friend, shall file her petition in the court of chancery for the district in which she resides, praying that she be decreed, for the purposes aforesaid, to be declared a *femme sole*." The petition of the wife, under this statute then before the court, did not state that she had a statutory or other separate estate. The decree upon that petition removing her disabilities was being collaterally assailed. The court held that the petition was fatally defective on account of the omission stated; that the chancellor was consequently without jurisdiction and his decree void. Chief Justice Stone said, "What are the essentials to put this statutory jurisdiction into exercise? The petitioner must be a married woman. The statute provides for none other. She must have an estate, for the powers of the chancellor can be invoked and exercised only in reference to her estate. The estate must be separate, either statutory or otherwise. Such is the statute, and the chancellor's power is confined by the statute to that description of estate. We say she must have an estate. Courts pronounce on existing rights and existing conditions, not on future possibilities. A petition under this statute, averring that the petitioner had no estate, statutory or otherwise, would certainly be demurrable. The chancellor would not pronounce judgment on a mere abstraction or imaginary case. A real subject of judicial inquiry must be before the court. A proceeding to obtain the judgment of the court as to a right of property when there is no such property in existence is certainly an anomaly. The statute requires that such petition shall pray that the petitioner 'be decreed for the purposes aforesaid a *femme sole*.' The purposes aforesaid are relief from 'the disabilities of coverture as to her statutory and other separate estate.' How can she be under disabilities when she has no estate? And how can the chancellor confer on her power over that she has not and never may acquire? The petition found in these records, under which it is claimed Mrs. Cohen was relieved by the disabilities of coverture, is fatally defective in substance, and did not put this statutory power of the chancellor into exercise. It entirely omits to aver that she had any estate of any kind, statutory or otherwise, and thus fails to show she was entitled to the relief the statute offers. A failure to make a jurisdictional averment in statutory proceedings like this is equivalent to an admission that there is no fact on which to base such averment. The chancellor never having acquired jurisdiction, the whole proceeding was and is void." Citing a number of Alabama cases. This case has been followed in the following: Stoutz *v.* Burke, 74 Ala., 530; Voltz *v.* Voltz, 75 Ala., 555; Falk *v.* Hecht, *ib.*, 293; Hatcher *v.* Diggs, 76 Ala., 189; Powell *v.* Mortgage Co., 87 Ala., 602. In Cox *v.* Johnson, 80 Ala., 24, the same principle was applied to the statute for relieving minors of their disabilities. In these cases, in reference to the disabilities of married women, we have seen the statute did not in terms provide what the petition should contain. Here it expressly requires that it shall contain these facts.

The principle above declared, that the statutory jurisdictional facts must affirmatively appear of record when the jurisdiction is statutory and limited, as in this case, is as old to this court as the organization of the court itself, and has been declared and enforced in decisions numbered by scores. There is no more firmly established rule of property in this State.

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The probate court, by reason of the omission mentioned, was, unless the rule be set at naught, without jurisdiction to appoint a guardian, and the appointment of Richards was void.

But if this were otherwise, if the petition had alleged all these requisite facts, we find there is wanting the judicial ascertainment of the truth and existence of such facts which the statute in terms provides shall be had before the appointment of a guardian shall be made. A requirement of a petition stating certain named facts would be the emptiest form, without some adequate procedure for the ascertainment of their truth, and until there truth is judicially ascertained and established in the mode prescribed by law, the case they make cannot, in the view of a court of justice, be said to exist. We search the record of the proceedings in vain to find thereon an ascertainment, judicial or otherwise, by judge or jury, that either of the jurisdictional facts to which I have referred ever had an existence, except that Jetta Simon was a person of unsound mind. Although the jurisdiction is confined to persons of unsound mind who have estates, real or personal, and who, unless non-residents of the State, reside in the county where the proceedings are instituted, there was no ascertainment whatever that Jetta Simon resided in Mobile county, or that she had any estate whatever, real or personal. So far as these proceedings ascertain (or even allege, as for that matter), the appointment of Richards was a mere effort to commit to him the care and keeping of the person of Jetta Simon, a person residing we know not where and owning no estate—a case for which the law makes no provision whatever. The statute expressly provides how the facts shall be judicially ascertained, in terms requiring that a jury shall "make inquisition of the facts alleged in the petition and a true verdict render according to the evidence," and then declares that "if the jury find by their verdict that the facts alleged in the petition are true, and that such person is of unsound mind, the court must cause the petition and all the proceedings thereon to be recorded and appoint a suitable guardian of such person." It thus becomes, first, by the allegation of the essential facts in the petition, and next by the judicial ascertainment by a jury that the facts so alleged are true, a case where the probate court is authorized to appoint a guardian. This ascertainment by a jury is manifestly a *sine qua non* to the exercise of the jurisdiction. Language could not be plainer. The verdict simply was that Jetta Simon was a person of unsound mind, thus failing to ascertain any of the other jurisdictional facts. The effect of the majority opinion is that the very, the only, means provided and required by the statute for the judicial ascertainment and establisment of facts which constitute the case in which, by the statute, the probate court is authorized to appoint a guardian is a mere

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matter of regulation and its non-observance a mere irregularity. If this be true, then most clearly no verdict at all need be rendered in order to uphold the appointment, for if a verdict may omit to find all the facts but one and still be sufficient, a finding of none of the facts is essential, and if this be true the requirement of an inquisition and the mode of conducting it prescribed by the statute would be likewise matters of regulation, and their non-observance would not affect the validity of the appointment, for surely the verdict required by the statute to be rendered is the sole end and aim of the inquisition, without which the inquisition would amount to nothing, and this verdict, to be of any force at all, must be the verdict which the statute requires—it must ascertain that the facts stated in the petition are true. The result would be that the probate court would be authorized to appoint the guardian upon bare allegations of facts unproven, unascertained, by any judicial proceeding, and the order of the probate court appointing the guardian would be conclusive evidence of its authority to make the appointment. If this be a correct construction of the statute I would hesitate to say that it is not violative of both the Federal and State constitutions, in that by virtue of it a person may be deprived of the possession of his property without due process of law.

It is said in the opinion of the court that "the jurisdiction to appoint guardians for persons of unsound minds is as extensive as in the case of probate of wills, the granting of letters testamentary, sales of property of intestates, allotment of dower, and partition of lands, all of which are enumerated, with other subject-matters of jurisdiction, under said section 787" of the code. As I under-
68 stand the rule, this statement is partially incorrect. As to sales of property of intestates, allotment of dower, and partition of lands, it is correct; but as to probate of wills, the granting of letters testamentary and of administration, and of orphans' business, the jurisdiction is derived from the constitution and is therefore general, and, like all other courts of general jurisdiction, its decrees in those matters are valid, unless by something appearing upon the record it is affirmatively shown that some jurisdictional fact did not exist in the particular case, whereas in those proceedings wherein the jurisdiction of the court is of purely legislative creation, such as sales of property of intestates, dower proceedings, partition, and the like, the jurisdiction is special and limited, and no intendments will be indulged to support its exercise. The facts which the statute makes essential to the jurisdiction must affirmatively appear upon the record, or else the decree will be void.

For the authorities making this distinction plain, see the collation in 3 Brick. Dig., p. 181, §§ 71, 72. Take the case of Sims *v.* Waters, there cited, and from it we see that in the settlement of intestates' estates before the probate court, prior to the grant to that court of general jurisdiction of such settlements by the constitution of 1868, the jurisdiction was special and lim-ted, whereas after the constitutional grant it was general.

The statute, § 787 of the Code, does not undertake or profess to constitute the probate court a court of general jurisdiction of any

matter. Original jurisdiction of the specified subjects-matter is conferred, but, like all purely statutory jurisdictions, those not given by the constitution must not only be exercised substantially as the statute requires, but the essential facts—those which make up the jurisdiction—must affirmatively appear.

The summation of the decision of the court is that the probate court may appoint a guardian of a person of unsound mind without an allegation, even, that the person is of that class of persons *non compos mentis*, over whom the statute extends the jurisdiction, to wit, those having an estate, real or personal, much less proof or judicial ascertainment that the person is of that class. There is not, from the beginning to the end of the proceedings in the matter of the appointment of Richards, an intimation that Jetta
69 Simon was a person of unsound mind having an estate, real or personal. Nor is it necessary that the further jurisdictional facts be judicially established by the inquisition and verdict which the statute requires, unless the court would hold that it is necessary that there should be a verdict finding that the person was a "person of unsound mind," as there was in the case of Jetta Simon, and which is now held to have been sufficient without more.

In the view I take of the decision, it is a departure from so many adjudications of this court holding that in statutory proceedings of this kind, before courts of special and limited jurisdiction, the jurisdictional facts must appear of record, that I feel it my duty to file my dissent.

70 STATE OF ALABAMA, }
Judicial Department. }

The Supreme Court of Alabama, Division Number 19.

JETTY SIMON, Plaintiff in Error, }
vs. }
JOHN N. CRAFT, Defendant in Error. }

I, Robert F. Ligon, Junior, clerk of the supreme court of Alabama, by virtue of the writ of error, which is hereto attached, and in obedience thereto, do hereby certify that the foregoing pages, numbered from 1 to 60, inclusive, supplemented by pages marked A, B, C, and D, inclusive, contain a complete, true, and correct copy of the record of the appeal in said cause in the supreme court of Alabama, together with the assignments of errors made in said court, and of the record and all of the proceedings had in the supreme court of Alabama in said cause, as the same appear and remain of record in this office.

And I further certify that said foregoing pages contain also true and complete copies of all of the opinions rendered by the supreme court of Alabama in said cause, both upon the last and upon the former appeals therein.

In witness whereof I have hereunto affixed the seal of Alabama,

at the capitol of the State of Alabama, at Montgomery, on this the 15th day of January, A. D. 1900.

[Seal of the Supreme Court of Alabama.]

ROBERT F. LIGON, JR.,
Clerk of the Supreme Court of Alabama.

71 To the Honorable Thomas N. McClellan, chief justice of the supreme court of Alabama:

And now comes your petitioner, Jetty Simon, and humbly petitioning your honor for a writ of error to bring before the Supreme Court of the United States the record and proceedings of the supreme court of Alabama in a certain cause hereinafter designated for the correction of errors therein, shows unto your honor:

First. That on the 23rd day of November, 1899, the supreme court of Alabama, being the State court of last resort in Alabama to which said matter can be presented or a decision therein had, rendered a final judgment in a certain cause then pending, wherein your petitioner, Jetty Simon, was the appellant and John N. Craft was the appellee, thereby in all things affirming a final judgment which had been rendered by the circuit court of Mobile county, Alabama, on the thirteenth day of December, 1898, in an action of ejectment, wherein your petitioner, Jetty Simon, was the plaintiff and the said John N. Craft, having been substituted for his tenant, was the defendant, which said judgment was in favor of the defendant, John N. Craft, and against the plaintiff, who is now your petitioner.

Second. And your petitioner further shows unto your honor that in said judgment of affirmance the supreme court of Alabama committed an error in that your petitioner was thereby deprived of her property without due process of law and in direct violation of section one, article fourteen, of the Constitution of the United States. Said constitutional question arose and was directly presented to and passed upon by the supreme court of Alabama adversely to your petitioner, claiming immunity under said section one, article fourteen, of the Constitution of the United States, and your petitioner was deprived of her property without due process of law in the following manner—that is to say, that your petitioner instituted an action of ejectment in the circuit court of Mobile county, Alabama, on the 6th day of September, 1895, against one Charles L. Brown to recover the possession of certain real
72 estate situate in Mobile, Alabama, and the said John N. Craft, being the landlord of the said Brown, was substituted for him and became defendant in said action. Upon the trial of said action the title of the plaintiff was admitted, but the defendant claimed to have obtained the title of the plaintiff by virtue of a sale and mesne conveyances from one Ralph G. Richards, purporting to act as the guardian of the plaintiff and to make said sale and execute said conveyance, by the authority of the probate court of Mobile county had in a certain proceedings which were begun by a petition filed by said Ralph G. Richards, styling himself as

the guardian of the plaintiff, and praying for authority from the probate court of Mobile county to sell said property for the payment of certain debts alleged to be due by your petitioner. To this proceedings your petitioner was not a party, and of them she had no notice. In order to bind your petitioner by the said sale and by the conveyance of said Ralph G. Richards the defendant undertook to show that your petitioner had been adjudged a lunatic, and that the said Ralph G. Richards had been regularly appointed as her guardian, and to this end introduced in evidence the record of certain proceedings had in the probate court of Mobile county, Alabama, which were begun on the 31st day of January, 1889, by a petition of the said Ralph G. Richards, in which he alleged, amongst other things, that your petitioner was of unsound mind and incapable of governing herself or conducting and managing her affairs, and praying that such proceedings might be had as were necessary and proper to determine, according to law in such cases made, whether or not your petitioner was a person of unsound mind; but your petitioner shows unto your honor that the said entire proceedings were void, first, because the said probate court had no jurisdiction of the subject-matter thereof, and second, because said proceedings were had against your petitioner without due process of law, in this, that the sheriff of Mobile county took the body of your petitioner into his custody, and actually and physically restrained her from appearing at the trial of said matter and from defending her liberty and property against the inquisition of lunacy which had been thus instituted,
73 which said restraint was imposed upon your petitioner by the said sheriff in conformity to the writ which was issued in said matter from the said probate court. Your petitioner shows unto your honor that the statute of Alabama, under which said proceedings was had, provides for no process whatsoever to the person against whom an inquisition of lunacy is instituted, except that the judge of the probate court "must also issue a writ, directed to the sheriff, to take the person alleged to be of unsound mind, and, if consistent with his health or safety, have him present at the place of trial." In attempted compliance with this statute, the probate court of Mobile county, upon the filing of said petition by said Richards, issued a writ to the sheriff of Mobile county, directing him thus: "Now, therefore, if it be consistent with the health and safety of the said Jetty Simon, you are required to take her body, so that you may have her in said court to be present at said trial and before the jury then to be empanneled to make said inquisition." Your petitioner shows unto your honor that the provisions of said statute leave it to the sheriff of the county to determine, in his discretion, whether the alleged lunatic shall or shall not be accorded the privilege guaranteed by the Constitution of the United States, of having an opportunity of introducing evidence and to be heard before they are deprived of their liberty and property; that the said writ so issued in this instance submitted it to the sheriff to determine, in his discretion, whether your petitioner should be permitted to be present at the trial of said petition

or to controvert its allegations or to be heard upon the subject, and the sheriff of Mobile county in this particular instance, as appears from his return, exercised his discretion against your petitioner, took her body into his custody, and restrained her from being present and defending said matter, so that your petitioner was deprived of all opportunity of being heard upon said matter. Meantime, the said probate court, while thus causing your petitioner to be restrained, as aforesaid, proceeded *ex parte* and in her absence to declare her a lunatic and to appoint the said Ralph G. Richards as a guardian of her entire estate, and your petitioner shows
74 unto your honor, therefore, that the said appointment of Ralph G. Richards as her guardian was absolutely void and that she was not, therefore, bound by the proceedings which the said Ralph G. Richards subsequently instituted for the sale of her property and of which she had no notice, and that the defendant, John N. Craft, obtained no title to your petitioner's property by virtue of the deed which was executed by the said Ralph G. Richards and the mesne conveyances.

And your petitioner further shows unto your honor that for a number of other reasons, which will fully appear in an examination of the transcript of the record and proceedings of the supreme court of Alabama in said cause, which is herewith presented, the said probate court had no jurisdiction whatsoever of said subject-matter, and that for those reasons also the said appointment of Ralph G. Richards was a mere nullity.

Your petitioner, however, shows unto your honor that at the trial of said ejectment suit so instituted, as aforesaid, by your petitioner in the circuit court of Mobile county the said circuit court held that the probate court of Mobile county did obtain jurisdiction of the subject-matter of said inquisition of lunacy by virtue of the filing of the petition by Ralph G. Richards alleging that your petitioner was insane and seeking to have her declared a lunatic, and that your petitioner was bound by said proceedings, notwithstanding the fact that, in accordance with the only process which was issued therein to your petitioner, she was by the sheriff of Mobile county taken into his custody and physically restrained from appearing at the hearing or defending said matter, and instructed the jury that if they believed the evidence they should find for the defendant, which the jury accordingly did; whereupon the said circuit court of Mobile county rendered a judgment in favor of the defendant and against your petitioner for the lands in *ug*estion. From this judgment your petitioner sought and obtained an appeal to the supreme court of Alabama, and the supreme court of Alabama on the 23rd day of November, 1899, rendered the judgment aforesaid affirming the judgment of the court below, thus necessarily passing upon the validity of the appointment of said guardian, and holding that your petitioner was deprived of her title to her said real estate by
75 virtue of the said appointment of said guardian and if his *ex parte* proceedings for the sale of her said property, thus depriving your petitioner of her property without affording her the

opportunity of being heard either at the said inquisition of lunacy or at the said proceedings for the sale of the said real estate.

In evidence of all of which your petitioner presents herewith a full and complete transcript of the record and proceedings had in said cause in the supreme court of Alabama, duly certified.

Your petitioner also presents herewith her assignment of errors.

Wherefore your petitioner prays unto your honor that a writ of error may issue in this behalf from the Supreme Court of the United States to the supreme court of Alabama for the correction of the error so complained of, and that a transcript of the record, proceedings, and papers in said cause, duly authenticated, may be sent to the Supreme Court of the United States for such further proceedings as may be there had, and that your petitioner may have such other or further relief as she may be entitled to, the premises considered.

GREGORY L. SMITH,
HARRY T. SMITH,
Attorneys for Plaintiff in Error.

Presented to me this the 15th day of January, 1900.
THOS. N. M'CLELLAN,
Chief Justice.

76 JETTY SIMON, Plaintiff in Error,
vs.
JOHN N. CRAFT, Defendant in Error.

"*Assignments of Error Committed by the Supreme Court of Alabama.*"

And now comes the plaintiff in error, by her attorneys, and says that in the record and proceedings in the supreme court of Alabama in the above-entitled cause there is manifest error in this:

The action was in ejectment.

The title of the plaintiff was admitted, but the defendant in error claimed to have obtained the title of the plaintiff by virtue of a sale and mesne conveyance from one Ralph G. Richards, purporting to act as the guardian of the plaintiff, and to make said sale and execute said conveyance by virtue of the authority of the probate court of Mobile county, had in a proceedings which was begun by a petition filed by said Ralph G. Richards, styling himself as the guardian of the plaintiff, and praying for authority from the probate court of Mobile county to sell said property for the payment of certain debts alleged to be due by the plaintiff. To this proceedings plaintiff was not a party and of it she had no notice. In order to bind the plaintiff by the said sale and conveyance the defendant undertook to show that the plaintiff had been adjudged a lunatic, and the said Richards had been regularly appointed as her guardian, and to this end introduced in evidence, against the objection of the plaintiff, the record of certain proceedings had in the probate court of Mobile county, which were begun on the 31st day of January, 1889, by a petition of said Richards, alleging, amongst other things, that

the plaintiff was of unsound mind, and praying that such proceedings might be had as were necessary and proper to determine, according to law in such cases made, whether or not the plaintiff was a person of unsound mind. Such proceedings were void, first, because said probate court had no jurisdiction of the subject-matter thereof,
77 and, second, because said proceedings were had against the plaintiff without due process of law in this, that the sheriff of Mobile county took the body of the plaintiff into his custody and actually and physically restrained her from appearing at the trial of said matter and from defending her liberty and property against the inquisition of lunacy which had been thus instituted, which said restraint was imposed upon the plaintiff by the said sheriff in conformity to the writ which was issued in said matter by the probate court. The statute of Alabama under which said proceedings was had provides for no process whatever to the person against whom an inquisition of lunacy is instituted, except that the judge of the probate court "must also issue a writ direct to the sheriff to take the person alleged to be of unsound mind and, if consistent with his health and safety, have *them* present at the place of trial." In attempted compliance with this statute the probate court of Mobile county, upon the filing of said petition by said Richards, issued a writ to the sheriff of Mobile county, directing him thus: "Now, therefore, if it be consistent with the health and safety of the said Jetty Simon, you are required to take her body, so that you may have her in said court to be present at said trial and before the jury then to be empanelled to make said inquisition." Upon the issuance of said writ the said sheriff of Mobile county, as appears from his return, took the body of the plaintiff into his custody and restrained her from being present and defending said matter, so that she was deprived of all opportunity of being heard upon said matter. Meanwhile the said probate court, while thus causing the plaintiff to be restrained, as aforesaid, proceeded in her absence to declare her a lunatic and to appoint the said Ralph G. Richards as the guardian of her entire estate. Said proceedings were, therefore, void. The defendant was, nevertheless, permitted by the trial court, against the objection of the plaintiff, to introduce in evidence said entire proceedings, and the said trial court thereupon charged the jury in writing that if the jury believed all of the evidence in the case they ought to find a verdict for the defendant, and refused the written request of the plaintiff to charge the jury as follows:
78 "If the jury believe all of the evidence in the case they ought to find a verdict for the plaintiff for the lands described in the complaint." The verdict was for the defendant, and from the judgment rendered thereon an appeal was taken to the supreme court of Alabama, where a decision was rendered to the effect that the proceedings declaring the plaintiff in error a lunatic and appointing the said Richards as her guardian were valid and binding, and that by virtue thereof and of the conveyance of the said Ralph G. Richards the plaintiff was deprived of her title to the property in question. From this judgment this writ of error has been allowed, and the plaintiff in error insists:

1st. That the supreme court of Alabama erred in deciding that the said record and proceedings of the probate court of Mobile county, Alabama, in the matter of the inquisition of lunacy against the plaintiff in error were admissable in evidence against her.

2nd. That the supreme court of Alabama erred in deciding that the said proceedings in the probate court of Mobile county, by which the plaintiff in error was declared a lunatic, could not be collaterally impeached.

3rd. That the supreme court of Alabama erred in holding that the said proceedings in the probate court of Mobile county, by which the plaintiff in error was declared a lunatic, were supported by the service of due process of law as against the plaintiff in error.

4th. That the supreme court of Alabama erred in deciding that the decree of the probate court of Mobile county appointing Ralph G. Richards as the guardian of the plaintiff in error was valid and binding as against the plaintiff in error.

5th. That the supreme court of Alabama erred in deciding that the probate court of Mobile county had jurisdiction to appoint Ralph G. Richards as the guardian of the plaintiff in error.

6th. That the supreme court of Alabama erred in deciding that the said record and proceedings of the probate court of Mobile county in the matter of the petition of Ralph G. Richards for the sale of the real estate which is the subject-matter of this suit *was* admissable evidence against the plaintiff in error.

7th. That the supreme court of Alabama erred in deciding
79 that the deed which was executed by Ralph G. Richards on the 11th day of May, 1899, to Henry J. Simon operated to divest the title of the propery in question out of the plaintiff in error.

8th. That the supreme court of Alabama erred in holding that the proceedings had in the probate court of Mobile county for the sale of the real estate in question and the decree authorizing said sale under which Ralph G. Richards conveyed the property in question to Henry J. Simon *was* not void for want of due process of law as against the plaintiff in error.

9th. That the supreme court of Alabama erred in holding that the circuit court of Mobile county did not err in charging the jury as follows: "If the jury believe all of the evidence in the case, they ought to find a verdict for the defendant."

10th. That the supreme court of Alabama erred in holding that the circuit court of Mobile county did not err in refusing the written request of the plaintiff in error to charge the jury: "If the jury believe all of the evidence in the case, they ought to find a verdict for the plaintiff for the lands described in the complaint."

11th. That the supreme court of Alabama erred in deciding that the circuit court of Mobile county did not err in overruling the plaintiff's in error first objection "to the proceedings had in the probate court of Mobile county to decree the plaintiff in error a lunatic because said proceedings did not constitute due process of law."

12th. That the supreme court of Alabama erred in deciding that

the circuit court of Mobile county did not err in overruling the plaintiff's in error second objection to the proceedings had in the probate court of Mobile county to decree the plaintiff in error a lunatic because said proceedings did not constitute due process of law, "in that there was no process issued notifying Jetty Simon to be present at the trial of the inquest of lunacy that was held."

13th. That the supreme court of Alabama erred in deciding that the circuit court of Mobile county did not err in overruling the plaintiff's in error third objection to the proceedings had in the probate court of Mobile county to decree the plaintiff in error
80 a lunatic because said proceedings did not constitute due process of law, "in that no provision was made in or by said proceedings whereby said Jetty Simon might be present at the inquest of lunacy that was held."

14th. That the supreme court of Alabama erred in deciding that the circuit court of Mobile county did not err in overruling the plaintiff's in error fourth objection to the proceedings had in the probate court of Mobile county to decree the plaintiff in error a lunatic because said proceedings did not constitute due process of law, "in that the writ of arrest issued for the body of Jetty Simon was conditional in form and conferred upon the sheriff the power to determine whether it should be executed or not."

15th. That the supreme court of Alabama erred in deciding that the circuit court of Mobile county did not err in overruling the plaintiff's in error fifth objection to the proceedings had in the probate court of Mobile county to decree the plaintiff in error a lunatic because said proceedings did not constitute due process of law, "in that the writ of arrest left it to the judgment of the sheriff whether the said Jetty Simon should be allowed to appear at the trial of the inquest of lunacy."

16th. That the supreme court of Alabama erred in deciding that the circuit court of Mobile county did not err in overruling the plaintiff's in error sixth objection to the proceedings had in the probate court of Mobile county to decree the plaintiff in error a lunatic because said proceedings did not constitute due process of law, "in that the writ of arrest authorized the sheriff to restrain Jetty Simon of her liberty and deprived her of the opportunity to be heard at the inquest of lunacy."

17th. That the supreme court of Alabama erred in deciding that the circuit court of Mobile county did not err in overruling the plaintiff's in error seventh objection to the proceedings had in the probate court of Mobile county to decree the plaintiff in error a lunatic because said proceedings did not constitute due process of law, "in that the sheriff's return shows that under the writ of arrest he restrained Jetty Simon of her liberty and did not permit her to be present at the trial of the inquest of lunacy."

18th. That the supreme court of Alabama erred in deciding that the circuit court of Mobile county did not err in overruling
81 the plaintiff's in error eighth objection to the proceedings had in the probate court of Mobile county to decree the plaintiff in error a lunatic because said proceedings did not consti

tute due process of law, "because the statute under which Jetty Simon was restrained of her liberty and deprived of her property is in conflict with article 5 — the amendment to the Constitution of the United States, which provides that no person shall be deprived of life, liberty, or property without due process of law, and in conflict with article XIV of the amendment to said Constitution:

a. In that it authorizes a citizen to be deprived of his or her liberty without due process of law.

b. In that it authorizes a citizen to be deprived of his or her property without due process of law.

19th. That the supreme court of Alabama erred in deciding that the circuit court of Mobile county did not err in overruling the plaintiff's in error ninth objection to the proceedings had in the probate court of Mobile county to decree the plaintiff in error a lunatic, "because said proceedings in the probate court are irrelevant and immaterial to any issue in the cause."

GREGORY L. SMITH,
HARRY T. SMITH,
Attorneys for Plaintiff in Error.

Presented to me this January 15, 1900.

THOS. N. McCLELLAN,
Chief Justice.

82 JETTY SIMON, Plaintiff in Error,
vs.
JOHN N. CRAFT, Defendant in Error.

Know all men by these presents that we, Jetty Simon and Alex. Bloch and S. Hass, are held and firmly bound unto the above-named John N. Craft in the full sum of two hundred and fifty dollars; for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

In witness whereof we have hereunto set our hands and seals this the 20th day of December, 1899.

The conditions of the foregoing obligation are such that whereas the above-named Jetty Simon has prayed for and obtained the issuance of a writ of error from the Supreme Court of the United States to reverse the judgment rendered in the above-entitled cause by the supreme court of Alabama on the 23rd day of November, 1899:

Now, therefore, if the above-named Jetty Simon prosecute said writ of error to effect and pay and answer all such costs and damages as may be awarded against her in the Supreme Court of the United States should she fail to make good said appeal, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

JETTY SIMON. [SEAL.]
ALEX. BLOCH. [SEAL.]
S. HAAS. [SEAL.]

STATE OF ALABAMA, }
County of Mobile. }

83 Personally appeared before me, Fannie Frolichstein, a notary public in and for said State and county, Alex. Bloch and S. Haas, each of whom, being duly sworn, deposes and says that he is worth more than the sum of two hundred and fifty dollars over and above all of his just debts, liabilities, and exemptions in property and subject to execution.

ALEX. BLOCH.
S. HAAS.

Subscribed and sworn to before me this the 20th day of December, 1899.

[Seal Fannie Frolichstein, Notary Public, Mobile Co., Ala.]

FANNIE FROLICHSTEIN,
Notary Public, Mobile Co.

This bond is approved by me this the 20 day of Dec., 1899.

THOS. N. McCLELLAN,
Chief Justice Supreme Court of Alabama.

At the instance of counsel for plaintiff in error I now again approve the above bond this January 15th, 1900.

THOS. N. McCLELLAN,
Chief Justice, etc.

84 JETTY SIMON, Plaintiff in Error, }
vs.
JOHN N. CRAFT, Defendant in Error. }

And now comes Jetty Simon, the plaintiff in error in the above-entitled cause, and prays the Supreme Court of the United States to reverse the decision of the supreme court of Alabama in the above-entitled cause on account of the errors specifically pointed out in the assignments of errors, which are herewith presented.

GREGORY L. SMITH,
HARRY T. SMITH,
Attorneys for Plaintiff in Error.

85 JETTY SIMON, Plaintiff in Error, }
vs.
JOHN N. CRAFT, Defendant in Error. }

In this cause the judgment of the circuit court of Mobile county, in the State of Alabama, having been affirmed, it is now certified that this, the supreme court of Alabama, is the State court of last resort and the highest court of law in the State of Alabama to which this matter can be presented or in which a decision in this suit can be had; that it was held by the supreme court of Alabama in this suit that the title of the plaintiff in error, which was otherwise undisputed, had been divested out of the plaintiff in error by certain

proceedings in the probate court of Mobile county, and that the plaintiff could not therefore recover in said suit, which was in ejectment; that the plaintiff in error claimed immunity from said proceedings under the Constitution of the United States, upon the ground that said proceedings were without due process of law, as against her, the plaintiff in error; that the decision of the supreme court of Alabama was adverse to such contention and determined that such proceedings in the said probate court *was* valid and operated to divest the title to the property in question out of the plaintiff in error, and there was thereby drawn in question, and decided adversely to the plaintiff in error, a title, right, privilege, or immunity claimed by the plaintiff in error under the Constitution of the United States of America; and this certificate is made a part of the record.

Made this the 15th day of Jan'y, 1900.

THOS. N. McCLELLAN,
Chief Justice, etc.

86 JETTY SIMON, Plaintiff in Error,
vs.
JOHN N. CRAFT, Defendant in Error.

This the 15th day of January, 1900, came the plaintiff in error, Jetty Simon, by her attorney, and filed herein and presented to me, Thomas N. McClellan, the chief justice of the supreme court of Alabama, her petition praying for the allowance of a writ of error, intended to be urged by her; praying also that a transcript of the record, proceedings, and papers upon which the judgment herein was rendered by the supreme court of Alabama, duly authenticated, may be sent to the Supreme Court of the United States, and that such other and further proceedings may be had as may be necessary in the premises.

On consideration whereof the said writ of error is hereby allowed upon the appellant, Jetty Simon, giving bond according to law in the sum of two hundred and fifty dollars, which bond being forthwith given and approved, let the writ of error issue as prayed for.

Made this the 15th day of January, 1900.

THOS. N. McCLELLAN,
Chief Justice, etc.

Endorsed on cover: File No., 17,621. Alabama supreme court. Term No., 507. Jetty Simon, plaintiff in error, *vs.* John N. Craft. Filed January 29, 1900.